'Psychological vulnerabilities' of adults with mild learning disabilities : implications for suspects during police detention and interviewing

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'PSYCHOLOGICAL VULNERABILITIES' OF ADULTS WITH MILD LEARNING DISABILITIES: IMPLICATIONS FOR SUSPECTS DURING POLICE DETENTION AND INTERVIEWING

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ABSTRACT

Whilst the *Police and Criminal Evidence Act 1984* (PACE) and its accompanying guidelines recognise that adults with learning disabilities may be 'vulnerable' as suspects during police detention and interviewing because they may be 'particularly prone in certain circumstances to provide information which is unreliable, misleading or self incriminating (Code C, Codes of Practice, Home Office, 1995a), no attempt is made to specify *why* they might be vulnerable.

Based on Gudjonsson's (1992a et seq.) influential concept of 'psychological vulnerabilities', a series of experimental studies examines three factors which may contribute to this putative 'vulnerability'. Compared with their counterparts in the general population, the participants with mild learning disabilities (Full Scale IQ scores ≤ 75 and attending designated 'learning disability' services):

(i) have more limited understanding of the *Notice to Detained Persons (NDP)* which provides information about the caution and legal rights;

(ii) are more likely to be impaired in making decisions which might protect their rights;

(iii) are more susceptible during questioning to the personality characteristics of acquiescence and interrogative suggestibility, and, though not more likely to confabulate, recall proportionately more incorrect information.

Two practical initiatives to alleviate this vulnerability are then described. Whilst an attempt to develop a version of the *NDP* which is more accessible is ineffective, a screening questionnaire to encourage self-identification by 'vulnerable' suspects, including people with learning disabilities, is more successful: it has now been introduced in the largest police force in England and Wales.

At the end of the thesis, the practical implications of the findings are considered and Gudjonsson's (1992a et seq.) concept of 'psychological vulnerabilities' is revisited. It is argued that positioning the concept within a capacity-based framework has advantages for further work aimed at understanding, and alleviating, the 'vulnerability' of suspects with mild learning disabilities during police detention and interviewing.

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CHAPTER 1

POLICE DETENTION AND INTERVIEWING AND THE SAFEGUARDS FOR SUSPECTS

Many suspects who are held in police detention and interviewed about alleged criminal offences are significantly intellectually disadvantaged (Gudjonsson, Clare, Rutter and Pearse, 1993). They may also have the significant impairment of social functioning and the history of developmental delay (Lyall, Holland, Collins and Styles, 1995) required to meet the accepted diagnostic criteria for a 'learning disability' (previously known in the U.K. as 'mental handicap'; American Association on Mental Retardation, 2002; British Psychological Society, 2001; World Health Organisation, 1992). Whilst the frequency with which suspects with learning disabilities subsequently become involved in miscarriages of justice is unknown, there is convincing evidence that, on occasion, they have been convicted of, and imprisoned or detained in hospital for, offences they did not commit (Kennedy, 1988; and see Gudjonsson, 1992a, 2003). In the words of the Royal Commission on Criminal Justice (RCCJ, Runciman, 1993), this is:

> 'both an individual tragedy and an affront to the standards of a civilized society' (ibid., para. 1.9).

Even when the consequences are less dramatic, they may be no less serious: innocent people may be remanded in custody and subsequently experience the psychological symptoms of post-traumatic stress disorder (Gudjonsson and MacKeith, 1994) or be treated as guilty by their local communities and suffer harassment and even threats to their lives (Pithers, 1993). At the same time, errors involving innocent people, including people with learning disabilities, may reduce the likelihood that the actual perpetrator will be identified, and then charged, prosecuted and convicted; as a result, the victim and his or her family may be denied access to justice whilst the offender may go on to commit further crimes.

Though acknowledging that many practices and professional groups within the criminal justice system may contribute to a miscarriage of justice, Zuckerman (1994) has argued that it:

> 'almost invariably has its root in faulty police work. Most commonly, it is an unreliable confession, or a false piece of forensic evidence or a misdirected police inquiry which is found at the root of convictions of innocent persons' (ibid., p. 120).

Not surprisingly, therefore, analyses of miscarriages of justice involving innocent people have often focussed on the role of the police in the investigation of alleged offences (for example, Gudjonsson, 1992a; McConville, Sanders and Leng, 1991; Walker and Starmer, 1999). In England and Wales (the situation in other parts of the U.K. is not considered in this thesis), police investigations are regulated by a single piece of statutory legislation, the *Police & Criminal Evidence Act 1984* (hereafter, *PACE*, Home Office, 1985a), accompanied by guidelines, the Codes of Practice (Home Office, 1985b, 1991, 1995a, 2002a, b). *Inter alia*, this legal framework provides suspects with learning disabilities with the same safeguards during police detention and interviewing as their 'general population' counterparts. In addition, though, it gives them some special protection because it is believed that, compared with their peers, they are 'vulnerable' to, or 'at risk' of, providing information which may be misleading, unreliable or self-incriminating, including a false confession (Home Office, 1995a, Note 11B). The importance of the legal framework introduced by *PACE* and the Codes has been summarised by Zander (1995) who concludes, on the basis of case law, empirical research, and the views of organisations involved in its operation, that nothing has:

> 'called into question the basic structure created by *PACE*. It has clearly been accepted by all as a piece of legislation that, subject no doubt to occasional amendment, will be with us into the indefinite future' (ibid., p. xi).

Since the legal framework is, then, apparently unlikely to change at present, it is important that the safeguards it provides should be adequate for their intended purpose of protecting suspects. The main purpose of this chapter is to examine these safeguards. First, though, to highlight their practical significance, an overview of the importance to the criminal justice system of police interviews with detained persons, is presented.

1.1 THE IMPORTANCE IN THE CRIMINAL JUSTICE SYSTEM OF INTERVIEWS WITH SUSPECTS

The investigation of alleged criminal offences involves many different elements (including, for example, taking statements from witnesses, examining forensic evidence). However, there is widespread agreement, both among the police themselves and observers (for example, Gudjonsson, 1992a, 1994; Irving and Hilgendorf, 1980; Walkley, 1987; Williamson, 1994), with the view that police interviews with suspects are:

> 'a critical - perhaps the most critical - stage in the processing of almost all criminal cases' (Baldwin, 1994, p. 66).

Whilst interviews with suspects may be carried out by the police for a number of reasons, there is substantial evidence (Baldwin and McConville, 1980; Irving, 1980; McConville et al., 1991; Moston and Stephenson, 1993) that, until the introduction of *PACE* and the Codes of Practice in 1986, the main purpose of detaining, and then interviewing, the alleged perpetrators of offences was to obtain a confession from them. Police behaviour during this process was often manipulative, if not frankly abusive (Firth, 1975; Gudjonsson, 1992a, 1994a; Irving, 1980; Softley, Brown, Forde, Mair and Moxon, 1980; Williamson, 1994; Zander, 1972), and there seemed little awareness that this was unacceptable. For example, more than half (sample size not given) of the detectives interviewed by Walkley (1983, cited in Williamson, 1994) reported that they were prepared to threaten, or actually assault, a suspect during interviewing.

Even now, police officers still, apparently (Pearse, 1997; but c.f. Williamson, 1993), believe that the outcome of a 'good' interview is a confession. From a police perspective, securing a confession enhances the status of the interviewing officer (Moston, 1990, cited in Pearse, 1997) and, from a practical point of view, minimises the need for further enquiries and, indeed, often completes the investigation. Why should a confession be so important? Undoubtedly, the reason is that, in contrast with some other jurisdictions, which require additional evidence from an independent source, uncorroborated confessions are recognized in English law (i.e. the law in England and Wales). As a result, the courts can convict defendants solely on the basis of their confessions (McConville, 1993); this does happen (Gudjonsson, 2003). In addition, guilty pleas are often submitted by suspects who confess during an interview (Baldwin,

1993; Baldwin and McConville, 1980; McConville, 1993; McConville, Sanders and Leng, 1991; Pearse, Gudjonsson, Clare and Rutter, 1998), minimising the duration and complexity of court proceedings. From the perspective of the criminal justice system, then, confessions obtained by the police during interviews with suspects are economical and efficient. Unfortunately, as Zuckerman (1994) comments, 'faulty police work' (ibid., p.120) lies at the heart of many of the notorious miscarriages of justice involving innocent people (such as Engin Raghip, Gudjonsson, 1992a, 2003; and see Ch. 2.1.3 for more detailed discussion), including men and women with learning disabilities (for example, Colin Lattimore, Gudjonsson, 1992a; and see Ch. 1.2.2).

The extent to which, post-*PACE*, police interviews are still directed towards obtaining confessions is vigorously debated. A reassuring perspective (Gudjonsson, 1994; Maguire, 1994; Pearse and Gudjonsson, 1996; Robertson, Pearson and Gibb, 1996; Williamson, 1990, 1994) is that radical change is taking place. Advocates of this view suggest that the traditional prosecution orientation towards interviews with suspects is being replaced by an inquisitorial approach, conducted by police officers who are more neutral and are concerned with seeking out the truth.

Certainly, it seems that the police service is attempting to change. Until ten years ago, police officers received no formal training in interviewing (Williamson, 1994). Instead, they tended to learn by experience or from 'manuals', such as that of Walkley (1987; based on the 'Reid' model, Inbau, Reid and Buckley, 1986; see Ch. 4.1.3), which advocate practices which are ethically unacceptable and lead to confession evidence being ruled inadmissible by the court (as in *R. v. Mason (Carl) 1988*). Over the past few years, however, following an initiative by the Home Office and the Association of Chief Police Officers (ACPO), a major national training programme has been implemented (Williamson, 1994). This approach, which focuses on 'investigative interviewing' is based on an 'ethical framework' which is non-confrontational and, in part, derived from strategies initially developed to enhance the memories of witnesses and victims of crime (Central Planning and Training Unit, 1994 a, b; National Crime Faculty, 1996, 1998).

In striking contrast with this perspective, however, a number of researchers (Baldwin, 1993, 1994; Brown, 1997; Hodgson, 1994; McConville, 1993; McConville et al., 1991; Maguire and Norris, 1994; Moston, Stephenson and Williamson, 1992) argue that

training and similar initiatives are most unlikely to be effective because the traditional purpose of interviewing suspects to obtain confessions will always take precedence in police practice over compliance with procedures. Maguire and Norris (1994), for example, argue that:

> 'virtually the sole aim of interviews becomes the extraction of a confession, 'ploys' are used to deny suspects legal advice, witnesses are manipulated into producing statements which precisely support the police account, and contrary evidence is often disregarded and concealed from the defence' (ibid., p. 74).

The debate has not yet been resolved. However, regardless of the perspective adopted towards the intended *purpose* of interviews with suspects detained by the police, there is general agreement about the importance of interviews within the investigative process and of the most acceptable outcome for the criminal justice system.

1.2 SUSPECTS' EXPERIENCES OF POLICE DETENTION AND INTERVIEWING

Though the extent of the change has been debated, it seems accepted that the introduction of *PACE* has had *some* effect on the practice of detention and interviewing by the police (for example, Baldwin, 1993; Bottomley, Coleman, Dixon, Gill and Wall, 1991; Brown, 1997; Irving and McKenzie, 1989; McConville et al., 1991; Pearse and Gudjonsson, 1996). In general, as was intended by the legislation, the duration of detention at a police station seems to have decreased (Irving and MacKenzie, 1989), with the overwhelming majority of suspects released within twenty-four hours. At the same time, interviews are also much briefer than before: though the range is very wide, the average duration is now less than three-quarters of an hour (Baldwin, 1993; Irving and McKenzie, 1989; Pearse and Gudjonsson, 1996; Williamson, 1990).

More importantly, there is evidence that police are less likely to use persuasive and manipulative tactics during interviews. For example, in a direct comparison of interviewing before and after the introduction of *PACE*, Irving and MacKenzie (1989) observed that the use of such strategies had decreased by a half (53%, N=68 interviews, ibid.). Subsequent research, carried out since the introduction of audio-taping (and, in some cases, video-taping) of all interviews with suspects detained at police stations, has broadly confirmed the observational findings. Based on their analysis of the audio-tapes

of interviews carried out during 1991-1992, Pearse and Gudjonsson (1996) found that, in 'run-of-the mill' cases, mostly involving alleged property offences (N=161), persuasive or manipulative tactics were not widely used. Indeed, many opportunities for challenging discrepancies or inconsistencies in suspects' accounts were simply missed (Pearse and Gudjonsson, ibid).

The findings suggest that, at least until the implementation of the national training programme, police interviewing was not particularly skilled. Baldwin (1993), summarising his analyses of six hundred audio- and video-taped interviews from police stations in different parts of the country, noted that fewer than half (40%) per cent of interviewers could be regarded as competent in the sense that they:

- were well-prepared;
- explained the procedures carefully before starting questioning;
- tested the suspect's explanation fairly without prejudgment;
- listened carefully to what was said;
- adapted their interviewing styles to the particular suspect and circumstances of the case; and generally
- allowed the suspect to present his or her version of events.

Subsequently, reflecting on the experience of watching and listening to these tapes, Baldwin (1994) concludes that:

> 'the single most striking characteristic of police interviewing to emerge from ... the tapes of interview is its general ineptitude. Much interviewing is simply feeble and aimless, scarcely matching the macho image of police interviewers as professional, skilled and forceful interrogators. The tapes reveal instead that many officers are nervous, ill at ease and evidently lacking in confidence. Even in the simplest cases, officers can be seen with their eyes glued to a written statement which they have evidently not even bothered to read before embarking on the interview' (ibid., p. 67).

Similar conclusions have been reached by others (Moston et al., 1992; Pearse, 1997; Robertson et al., 1996). Not surprisingly, then, in many cases, suspects do not seem to respond to police strategies during the interview. Instead, they adopt a position from the start and remain with it, whether it is to admit the alleged offence, deny it, or something in between. Though the validity of their decision-making can never be known, most of those who admit some involvement in the offence about which they are being

questioned apparently do so willingly, needing little pressure (Baldwin, 1993; Moston et al., 1992; Pearse and Gudjonsson, 1996).

In striking contrast, though, there are occasions on which the approach of the police seems coercive (Baldwin, 1993; McConville and Hodgson, 1993; Pearse, 1997; Pearse and Gudjonsson, 1996, 1999). Many miscarriages of justice involving innocent persons have arisen from practices during detention and interviewing which involve pressure (for example, maximising a suspect's anxiety about his or her predicament; emphasising the severity of the alleged offence; repeatedly saying that the suspect's account is not believable) and/or are psychologically manipulative (such as minimising the individual's responsibility, or offering inducements; the use of 'leading questions' to shape the suspect's account to fit what the interviewers know about the offences). Such practices increase the likelihood that self-incriminating admissions will be made to the police (for detailed accounts of the impact of police interviewing 'tactics', see Pearse, 1997).

Still, and accepting that tapes of formal interviews provide only partial information about police detention and interviewing, the evidence suggests that, *in most cases*, interviewing by the police is not particularly threatening - at least from the perspective of outsiders. Surprisingly, though, there have been few empirical attempts to gain accounts from suspects – the 'experts by experience' (Faulkner and Layzell, 2000) - of their experiences of police detention and interviewing. Some insight into the powerful effects of the experience may be provided by the reports of legal advisers about their own feelings about police stations, for example:

> 'Solicitor: I rarely go to police stations myself...Every time I go there, I feel nervous. I don't in court or here [in the office], but I do there.
>
> Researcher: Isn't that the idea?
>
> Solicitor: Yes, you are in their control. They decide to let you in, lock you up, when you do what you do. It's their place - they are in control' (McConville and Hodgson, 1993, p.35).

The extent to which such feelings are widespread among suspects is uncertain but it does seem that the self-confident 'old hand' is a much less frequent figure at the police station than fiction and police mythology suggest (Brown, Ellis and Larcombe, 1992; Baldwin, 1993). Instead, it appears that many suspects are highly anxious or distressed

(Brown et al., 1992; Gudjonsson, Clare, Rutter and Pearse, 1993; Irving, 1980; Irving and McKenzie, 1989). Gudjonsson and his colleagues (Gudjonsson et al., 1993), for example, found that almost one in five (19%, N = 160) of detained suspects whose current level of anxiety was assessed before police interviewing scored at, or above, the 98th percentile for the general population (on the State-Trait Anxiety Scale, Spielberger, Gorsuch and Lushene, 1970).

Whilst some suspects seem better able than others to deal with their situation (Brown et al., 1992; Gudjonsson et al., 1993), and, indeed, arguably, are active decision-makers (Irving and Hilgendorf, 1980), the admissibility of uncorroborated confession evidence in English law arguably means that detention and interviewing always has the potential to be a coercive experience for the alleged perpetrators of criminal offences (see, for example, McConville, 1993). Recognising this potential, there is a long-standing tradition, pre-dating the establishment of a national police force, of providing safeguards for suspects (Mirfield, 1985).

1.3 SAFEGUARDS FOR SUSPECTS BEFORE THE INTRODUCTION OF *PACE*

1.3.1 SAFEGUARDS FOR ALL SUSPECTS

For a long period before the introduction of *PACE*, the safeguards for suspects were mainly provided by the Judges' Rules, a set of guidelines about detention and interviewing which were originally formulated by senior judges on the basis of the common law (Mirfield, 1985). They were accompanied by a brief set of Administrative Directions for the police which were revised at intervals up to 1978 (Home Office Circular 89/1978) and remained until they were superceded by *PACE*. Their main purpose was to ensure that evidence from suspects would be admissible in court because it would have been given voluntarily, not obtained:

> 'by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression' (Home Office Circular 89/1978, e))

Failure to comply with the Judges' Rules, in particular (the consequences of breaches of the Administrative Directions were less clear), could lead to evidence being excluded (Mirfield, 1985). In practice, however, breaches appeared to have occurred regularly

(Softley et al.,1980) and were often overlooked by the Courts (Irving, 1990), possibly because they were unfamiliar even to lawyers (Fisher, 1977). From a practical point of view, too, they were unhelpful: the findings of an observational study (Irving, 1980) indicated that the concepts of 'voluntariness' and 'oppression' were very difficult for police officers to operationalise so that they could be used to guide their interviews with suspects.

Concerns about the adequacy of these safeguards had been expressed widely for at least two decades (Gudjonsson, 1992a) before a miscarriage of justice in the 1970s involving, among others, a young man with a learning disability, provided the impetus for reform which culminated in the introduction of *PACE* (Fennell, 1994; Irving and MacKenzie, 1989).

1.3.2 SAFEGUARDS FOR 'VULNERABLE' SUSPECTS

In early versions of the Judges' Rules and the Administrative Directions, a parent or some other adult who was independent from the police was supposed to be present when children (below 17 years of age) were interviewed; however, until 1978, there were no explicit safeguards for 'vulnerable' adult suspects

Reform of this situation was precipitated by the *Confait* case (Fisher, 1977; Gudjonsson, 1992a; Irving and MacKenzie, 1989; Price and Caplan, 1977). In 1972, during police detention, three youths (two of whom were technically children, and an adult, Colin Lattimore, then aged 18 years) confessed to killing Mr. Maxwell Confait before setting fire to his house. Three years later, after the convictions were quashed by the Court of Appeal (Criminal Division), an inquiry was conducted by a retired senior judge, Sir Henry Fisher (Fisher, 1977).

The report of the inquiry highlighted the likely impact of the psychological functioning of the three youths (Fisher, 1977, para. 5.9) on their false confessions. Of particular relevance to this thesis, the eldest, Colin Lattimore, clearly fulfilled the criteria for a diagnosis of learning disability: he had attended special schooling, was significantly intellectually impaired (his tested IQ was 66) and had just started attending a day-centre for people with learning disabilities (ibid., paras. 5.16 and 5.17). Whilst he was held on

remand, it was noted that he appeared to have difficulty appreciating the seriousness of his situation (ibid., para. 5.20). He was also apparently suggestible in that, according to a note of psychiatric evidence taken by junior counsel for the prosecution, he was:

> '(v)ery unreliable in distinguishing what was put to him about events and what he recollects himself about them' (ibid., para. 5.22).

Though Fisher (1977) concluded incorrectly that Colin Lattimore and his friends had been involved in some way (later, they were exonerated completely), his report provided a detailed indictment of the way in which official practice at all stages of the investigation and prosecution contributed to, or failed to protect against, the convictions of these vulnerable suspects. Of special relevance, in the context of this thesis, are the criticisms of the detention and interviewing by the police of Colin Lattimore:

- the guidance in the preamble to the Judges' Rules and Administrative Directions had been breached because he had not been advised of his right to consult a solicitor;
- he had been prompted by the interviewing officers during the preparation of his written statement; and
- whilst it was recognised that he had a learning disability (in the terminology of the time, the 'mental age' of a person of 14 years), this had not been taken into account (for example, by postponing the interview until one of his parents could attend). In addition, his appreciation of the likely consequences of making self-incriminating admissions may have been affected by the response 'I will see about your father about that later' (ibid., p. 266) given by one of the interviewing officers in answer to his question about whether he might be able to go home after making a confession (para. 2.13). In Fisher's view, this response was 'disingenuous and unfair' (ibid., para. 2.13 (d)).

Fisher's (ibid.) report which received a great deal of publicity, raised serious disquiet about the protection of suspects, especially suspects who were 'vulnerable' such as Colin Lattimore, and provided an important counterbalance to widespread public anxieties about the activities of 'sophisticated professional criminals' (Criminal Law Revision Committee, 1972, para. 21 (vi)).

During the inquiry, the safeguards for children were extended to adult suspects who, in the terminology of the period in which it was drafted, had a 'mental handicap' (but not any other 'vulnerable' suspects). Subsequently, they were incorporated into the Administrative Directions in the following terms:

> '(a)s far as practicable, and where recognised as such...a mentally handicapped adult...should be interviewed only in the presence of a parent of other person in whose care, custody or control he is, or of some person who is not a police officer (for example a social worker)' (Home Office Circular 89/1978, 4A, a)).

However, it was recognised that much more radical reform was required. Almost immediately after the publication of Sir Henry Fisher's report, the government responded by appointing the Royal Commission on Criminal Procedure (RCCP), chaired by Sir Cyril Philips, to consider the investigation and prosecution of all crime and, in particular, the 'fundamental balance' (Philips, 1981, p. iv) between the powers of the police and the rights of the suspect. Though causing massive controversy (see Zander, 1995), the majority of the recommendations of the RCCP for the investigation of offences (the recommendations for changes in the prosecution of offences were treated separately in the *Prosecution of Offences Act 1985*) were broadly given effect in *PACE* and its accompanying Codes of Practice.

1.4 SAFEGUARDS FOR SUSPECTS SINCE THE INTRODUCTION OF *PACE*

1.4.1 THE CAUTION AND LEGAL RIGHTS

The *Police & Criminal Evidence Act 1984* (Home Office, 1985a) which was introduced on 1st January, 1986 comprises little more than an outline of the law (Zander, 1995). Practical guidance about the implementation of *PACE* is given in the accompanying Codes of Practice (Home Office, 1985b, 1991, 1995a, 2002a, b), which are supposed to provide a self-contained handbook to the police (Zander, ibid.). Each of the six Codes (A-F) covers a different area relating to the investigation of alleged offences. In the context of this thesis, Code C, which has not been amended since 1995 (Home Office, 1995a), is of most relevance because it focusses on:

> 'practice for the detention, treatment and questioning of persons by police officers' (Home Office, 1995a, p. 25),

and outlines the safeguards to all suspects, including people with learning disabilities, during police detention and interviewing.

Under s.36 of *PACE*, a new role is defined, that of the Custody Officer, a uniformed officer of at least the rank of sergeant who is independent of any investigation and who, under s. 39, has overall responsibility for the suspect's welfare. Once the Custody Officer has established that there are grounds for detaining a person under arrest, he or she 'books in' the suspect. An important part of this procedure involves opening the Custody Record, an account, which is completed contemporaneously until the suspect leaves the police station, of the detention. At the 'booking in' stage, the Custody Officer has to record information about the suspect's personal details and property, as well as the grounds for the arrest and the authorization of detention. He or she also has to decide whether the suspect may be 'vulnerable' on the grounds of age or status and/or in need of medical assistance.

During this procedure, the Custody Officer is also required to provide oral information about the caution and the three legal rights (the right to have someone informed of the person's arrest, to consult a solicitor, and to consult the Codes of Practice). A written leaflet, the *Notice to Detained Persons* (*NDP*), is then provided to the suspect which reiterates and expands on these rights, and provides information about a fourth right, the right to a copy of the Custody Record.

Since 1991, Code C (Home Office, 1991) has specified that a written leaflet should also be given to suspects telling them about their other entitlements during detention (for example, access to food, drink, and exercise, see Notes 3A and 3B, Home Office, 1995a). Suspects are asked to acknowledge receipt of the *NDP* and the leaflet about their entitlements on the Custody Record; if they do not do so, this also must be recorded. Normally, the suspect is then taken to a cell.

The Custody Officer remains responsible for the suspect's welfare until custody is handed to another person, usually to the investigating officer for interviewing. Unless there are exceptional circumstances, the caution and right to legal advice must again be presented orally, and recorded on audio-tape, at the start of the interview (each interview, if there is more than one).

Since its introduction in 1986, Code C has been amended on two occasions (Home Office, 1991, 1995a), accompanied by changes in the *Notice to Detained Persons* (see Ch. 3 for further details). From the point of view of suspects, undoubtedly the most important of these developments is the modification of the right to silence (or right of silence; the two phrases mean the same, Zander, 1995).

The right to silence

Traditionally, the ultimate safeguard to prevent innocent suspects from self-incrimination has been the right to remain silent during questioning without adverse inferences being drawn at trial. Whilst, according to Mirfield (1997), there is radical disagreement among legal historians about the the way in which the right to silence became accepted in English common law, there is agreement that it was established long before the organisation of any formal police service. After the formulation of the Judges' Rules, the right to silence was presented to suspects through a standard caution, informing them that they did not have to respond to questions, and protected indirectly by the right to legal advice. Reflecting the views of the majority of the RCCP (Philips, 1981), it was preserved when *PACE* was introduced.

However, the preservation of the right to silence was stringently criticised, particularly by the police, who argued that it was:

> ' a protection for hardened criminals' (Association of Chief Police Officers, 1993, quoted in Leng, 1994, p. 27).

In response, the issue was re-examined by the RCCJ. The final report (Runciman, 1993, Ch. 4, p. 49 ff.) recommended that the right of silence should be retained because the benefits of removing the protection from experienced criminals were outweighed by the risk of miscarriages of justice arising from false confessions, particularly by 'vulnerable' suspects (ibid., para. 4.22). However, this recommendation was rejected by the (Conservative) government, apparently primarily for political reasons (Bridges, 1994; Morgan and Stephenson, 1994; Zander, 1994).

The right to silence was modified under the *Criminal Justice & Public Order Act 1994* (s. 34) so that the court is now allowed to draw adverse inferences about someone who raises a defence at trial after refusing to answer questions at a police station (Leng,

1994; Wasik and Taylor, 1995; Zander, 1995); the main inference being, of course, that the defence is untrue. These adverse inferences may *only* be drawn, however, if the suspect has received the caution (Wasik and Taylor, 1995; Zander, 1995), and, since the introduction of the *Youth Justice & Criminal Evidence Act 1999* (s. 58), if the suspect has *not* been denied access to a solicitor. The modification to the right to silence required that the caution be re-worded and a new version, which is currently in use, was introduced on 1st April, 1995 (see Ch. 4.4 for a detailed discussion).

The right to silence contained in the caution is protected indirectly through the right to a solicitor (or more properly, to legal advice, since the majority of suspects do not receive assistance from qualified legal advisers, McConville and Hodgson, 1993; Pearse and Gudjonsson, 1997). Based on empirical evidence, it has been argued (Bucke, Street and Brown, 2000), that, since the modification of the right to silence, the right to access to a solicitor has assumed even more importance.

The right to a solicitor

Following the recommendation of the RCCP (Philips, 1981), *PACE* (s. 58) greatly strengthened the law on the right to a solicitor. With limited exceptions, which are strictly defined under s. 58, suspects in police detention can consult in private with a solicitor, any time of the day or night, and the solicitor can be present during any interview with the police. Legal advice is available free of charge to suspects, whether they choose to have their own solicitor or use a duty solicitor, under the scheme provided for by the legislation (s. 59).

Though many criticisms have been made of the competence and effectiveness of legal advisers (Brown, 1997; Hodgson, 1994; Lord Chief Justice in *R. v. Paris, Abdullahi and Miller 1993*; McConville et al., 1991; McConville and Hodgson, 1993; Runciman, 1993), there is overwhelming evidence that suspects who receive such help are less likely to make self-incriminating admissions, including confessions, and more likely to exercise their right to silence (Baldwin, 1992; Gudjonsson and Petursson, 1991; Leng, 1993; McConville and Hodgson, 1993; Moston et al., 1993; Pearse and Gudjonsson, 1997). For example, based on a substantial sample of interviews (N=1067), Moston et al. (1993) found that the right to silence was used by almost one third of suspects who received legal advice, compared with fewer than five per cent who did not. Similarly, in

a more recent study, suspects who were not supported by a legal adviser during interviewing were four times more likely than their counterparts to make a partial or full admission (Pearse et al., 1998). Given the impact of legal advice, it is, perhaps, surprising to find that legal advisers are so inactive (McConville and Hodgson, 1993; Pearse and Gudjonsson, 1997): in more than three-quarters (N=180) of interviews, they made no intervention whatsoever (McConville and Hodgson, 1993). Perhaps, as Pearse and his colleagues (Pearse et al., 1998) suggest, their mere physical presence challenges police authority and, at least in 'routine' interviews, may support suspects in maintaining the strategies they have already decided to use.

In view of its importance, it might be expected that the majority of suspects would wish to exercise the right to a solicitor. In fact, however, even the most generous figures (Pearse and Gudjonsson, 1997) indicate that fewer than two-thirds of suspects are supported by a legal adviser when they are interviewed by the police; in other studies (for example, Bucke et al., 2000; Bottomley et al., 1989; Phillips and Brown, 1998), the number is much lower. One important reason is that the proportion of requests is limited: fewer than one-third of detained persons ask for legal advice (Brown et al., 1992; McConville et al., 1991). Brown (1997), discussing this surprising finding, concludes that there is no single explanation. It does appear that, unless suspects are too drunk or aggressive, Custody Officers normally present the rights orally and give out the written leaflet, the *Notice to Detained Persons* (Bottomley et al., 1991; Brown et al., 1992; McConville et al., 1991). However, the quality of the presentation is sometimes unsatisfactory because it is hurried, or garbled, or incomplete. For example, in more than a quarter of 'booking in' procedures observed by Brown and his colleagues (26%, N=517, Brown et al., ibid.), Custody Officers did not present the caution or one or more of the rights adequately. Such sloppiness is not limited to Custody Officers: Baldwin (1993) found that more than one in ten of cautions presented by investigating officers at the start of suspect interviews were unsatisfactory or incorrect.

In addition, Custody Officers' responses to suspects' attempts to exercise the right to a solicitor are not always satisfactory. On some occasions, they are simply unhelpful, but, on others, they blatantly discourage the suspect from exercising his or her rights. McConville et al. (1991), for example, cite a case in which, when the suspect says that he is uncertain whether or not to seek legal advice, the Custody Officer replies:

'(w)ell, I've put you down as 'no' for the moment' (ibid., p. 50).

Despite the changes introduced under *PACE*, then, in practice it may be difficult even for suspects who are not 'vulnerable' to use the safeguards which are meant to protect them during police detention and interviewing. This enhances the importance of the specific provision for 'vulnerable' suspects.

1.4.2 THE 'SPECIAL PROVISION' FOR 'VULNERABLE' SUSPECTS

Following the recommendations of the Royal Commission on Criminal Procedure (RCCP, Philips, 1981), the introduction of *PACE* formalised an additional safeguard, the 'special provision', for 'vulnerable' suspects (and for victims and other witnesses), children (aged below 17 years) and adults in cases where a police officer:

> 'has any suspicion, or is told in good faith, that a person ... may be mentally disordered or mentally handicapped, or mentally incapable of understanding the significance of questions put to him or his replies' (Home Office, 1995a, Code C, para. 1.4).

According to this 'special provision', an independent person (usually understood to be the Appropriate Adult or AA, Fennell, 1994) must be present when a 'vulnerable' suspect is interviewed by the police or involved in any formal procedure (such as receiving the caution and legal rights).

Responsibility for implementing the 'special provision' lies with the Custody Officer. He or she must identify that the suspect is 'vulnerable' and contact a person to attend the police station and act as the AA. Though the suspect's wishes are, as far as possible, to be respected, and a family member or carer can be used, it is recommended in one of the Notes for Guidance in Code C (Home Office, 1995a, Note 1E) that, for adults, the role should be undertaken by someone involved with relevant professional experience or training, such as a Social Worker or health care practitioner. Importantly, since 1991, the AA cannot be the solicitor acting for the person; nor, since 1995, can he or she be a lay visitor to the police station (ibid. para. 11.14). When the AA arrives at the station, the Custody Officer must reiterate the caution and legal rights to the suspect, and, it is implied, also take responsibility for ensuring information is provided to the AA about

his or her role during an interview. Code C explicitly directs that the Appropriate Adult is not expected simply to act as an observer but that he or she should:

- advise the person being questioned and observe that the interview is being conducted properly and fairly; and
- facilitate communication with person being interviewed (ibid., para. 11.16).

Contrary to what many Custody Officers apparently believe (Bean and Nemitz, 1994; Brown et al., 1992, p. 78; Medford, Gudjonsson and Pearse, 2000; Palmer and Hart, 1996; Phillips and Brown, 2000; see Ch. 7), the 'special provision' is *not* discretionary. Failure to implement this safeguard is a breach of the Codes and can lead to disciplinary action against police officers; moreover, it may have potentially serious implications under *PACE*.

Nevertheless, there is a striking discrepancy between the estimated prevalence of 'vulnerable' adult suspects (Gudjonsson et al., 1993) and the use of the 'special provision' (Bean and Nemitz, 1994; Brown et al., 1992; Gudjonsson et al., 1993; Medford et al., 2000; Robertson et al., 1996; see Ch. 7). Whilst, in part, this discrepancy reflects difficulties in the way in which the provision is implemented (see Ch. 7.1), its drafting is also problematic. In para.1.4 (Home Office, 1995a, Code C), it is suggested that 'mental disorder' and 'mental handicap' are distinct. Similarly, the Notes for Guidance (notes to guide in the application and interpretation of the main text) state that:

> '(i)t should be noted that 'mental disorder' is *different from* 'mental handicap' although the two are dealt with similarly throughout this code' (Home Office, ibid., Note 1G; my italics).

However, earlier in the same Note, 'mental disorder' is defined as:

> 'mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind' (ibid.).

This broad definition, adopted from the *Mental Health Act 1983* suggests that 'mental disorder' *includes* 'arrested and incomplete development of mind', arguably (Jones, 2003, p. 13), a synonym for 'mental handicap'. Unfortunately, the confusion is not resolved by consulting *PACE* because the definition of 'mental handicap' there, as:

> 'a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning' (Home Office, 1985a, s. 77(3))

is not consistent with all of Note 1G (Home Office, 1995a). Following the recommendation in the RCCJ's report (Runciman, 1993) for a comprehensive review of the 'special provision', a multi-disciplinary working group, convened by the Home Office, proposed that Note 1G (Home Office, 1995b) should be reworded to clarify the relationships between 'mental disorder', 'mental illness' and 'mental handicap'; unfortunately, their proposal was not accepted and the confusion remains.

The poor drafting of Code C has practical implications because there are different procedures for implementing the 'special provision' for suspects with a 'mental handicap' and their counterparts with a 'mental disorder'. For men and women with learning disabilities, the Custody Officer need only seek the presence of an Appropriate Adult. In contrast, suspects who are 'mentally disordered' must also be assessed by a police surgeon (known in the Metropolitan Police District as a Forensic Medical Examiner) to establish whether they are 'fit to detain' and 'fit to interview' (Home Office, 1995a, para. 9.2). Custody Officers often delay involving an AA until this assessment has taken place, abrogating to police surgeons their responsibility for deciding whether to implement the 'special provision' (Medford, Gudjonsson and Pearse, 2000; Phillips and Brown, 1998; Palmer and Hart, 1996; though c.f. Robertson et al., 1996). This is a breach of the Codes and, since the available evidence (Gudjonsson, Hayes and Rowlands, 2000) suggests that police surgeons often have limited understanding of the safeguards for 'vulnerable' adults, it may mean that suspects who are treated by Custody Officers as 'mentally disordered' rather than 'mentally handicapped' are disadvantaged in terms of their access to the 'special provision'. The working party convened by the Home Office in response to the report of the RCCJ (Runciman, 1993) proposed that Code C should be amended to specify that an Appropriate Adult be called whenever a police surgeon is asked to assess a suspect's mental health (Home Office, 1995b); again, however, the proposal was not accepted.

Since the 'special provision' simply formalised and extended the pre-*PACE* safeguard, it is, perhaps, not surprising that the relevant sections were poorly drafted in the original version of Code C (Home Office, 1985b). More reprehensible is the failure, despite informed recommendations, to attempt to address the difficulties comprehensively in subsequent versions (Home Office, 1991, 1995a). It is difficult to disagree with

Hodgson's (1997) conclusion that the 'special provision' remains 'something of the poor relation of criminal justice' (ibid., p. 785).

The purpose of the safeguards for suspects, including 'vulnerable' suspects, in Code C is to ensure that self-incriminating information provided during police detention and interviewing is admissible as evidence in court. Under *PACE*, there are a number of provisions to enforce the safeguards provided by the Codes.

1.5 CONFESSION EVIDENCE SINCE THE INTRODUCTION OF *PACE*

Though *PACE* preserved the protection provided by the powers of the court to exclude self-incriminating evidence, it introduced a number of radical changes. First, for the first time, a 'confession' was defined: under s. 82(1), it includes:

> 'any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise' (Home Office, 1985a).

Secondly, the criteria for excluding evidence were altered. The notion of 'voluntariness' was replaced by the concepts of 'reliability' and 'fairness', whilst 'oppression', though retained, was defined more closely. Importantly, the issue to be considered is not whether the confession is *true* but whether it has been obtained by means or in circumstances which are likely to render it *unreliable*. This has been stated most clearly in the leading case of *Cox* (*R.v.Cox 1991*; confirmed by *R. v. McGovern 1991* and *R. v. Kenny 1994*) where the court stated that:

> '(i)t is perfectly true that the judge must have regard to all the circumstances. But one of the matters to which he plainly cannot have regard is the truth of the statement' (quoted in Zander, 1995, p. 220.).

The three concepts of reliability, fairness and oppression are dealt with primarily under sections 76 and 78 of *PACE*. Section 76 is concerned with 'proof of facts', meaning that the burden of proof lies squarely with the prosecution whilst s.78 relates to 'the exercise of judgment by the court' (Birch, 1989, p. 96). Section 76 often involves some form of impropriety on the part of the police relating to 'oppression' (s. 76(2)(a)) or:

> 'anything said or done which is likely in the circumstances existing at the time, to render unreliable any confession...in consequence thereof' (s. 76(2)(b), Home Office, 1985a).

Section 78, which provides for the exclusion of 'unfair evidence' may be used when, even if there has been no impropriety by the police, it would be unfair to the defence to allow the evidence to go before the jury. In a widely cited analysis of the three sections, Birch (1989) draws the analogy of the prosecution needing to clear successive hurdles in a steeplechase, starting with section 76, crossing section 78, and finally, having to jump section 82(3) which effectively retains the common law power for the court to exclude any evidence where the 'prejudicial effect outweighs its probative value' (Zander, 1995, p. 250).

Of these three sections, s. 78 has been most widely used to exclude self-incriminating evidence by suspects during police detention and interviewing. Though the courts have declined to lay down guidelines, *by far* the most frequent basis for its application has been substantial breaches of the Codes of Practice or other aspects of *PACE* (Zander, 1995). These include (see Zander, 1995, p. 238 ff. for many more examples):

- not informing suspects of their legal rights (*R. v. Gokan and Hassan 1990*);
- denying access to a solicitor (*R. v. Samuel 1988*);
- failing to present the caution (*R. v. Doolan 1988*; *R. v. McGovern 1991*);
- not providing an independent person (an Appropriate Adult) when the suspect was a juvenile (*R. v. Glaves* 1993; *R. v. Weekes (Trevor Dave) 1993*).

In addition, evidence has been excluded because the police have:

- misrepresented the nature of identification evidence from witnesses (*George Heron 1993*);
- misrepresented the strength of forensic evidence to the defendant and his solicitor (*R. v. Mason (Carl) 1988*).

Most of the Court of Appeal judgments where a conviction by a lower court has been quashed because the suspect is a person with a learning disability have resulted from the application of section 76(2)(b) (Palmer and Hart, 1996). Learning disability may be relevant both to what was 'said and done' and to the 'circumstances existing at the time' (Birch, 1989). Importantly, the criteria for the application of this section depend on

what the suspect's *actual* mental state is likely to have been at the time of the confession, not what it was believed to be by the police (*R.v. Everett 1988*). This was confirmed by the Court of Appeal's decision to quash the conviction of Engin Raghip (*R. v. Silcott, Braithwaite and Raghip 1991*) for the murder of a police officer (since this case is a landmark in the development of the concept of 'psychological vulnerabilities' which provides the framework to this thesis, it is discussed in detail in Ch. 2.1.3).

Learning disability and other vulnerabilities have also been considered in applications to exclude self-incriminating evidence under s. 76(2)(a). One of the leading cases providing the police with concrete guidance about the meaning of 'oppression' is that of Stephen Miller, one of the 'Cardiff Three' (*R. v. Paris, Abdullahi and Miller 1993*) who were wrongly convicted for a brutal murder (Williams, 1995; Pearse, 1997). Though not a person with a learning disability, Mr. Miller was significantly intellectually disadvantaged (his Full Scale IQ score was 75) and was extremely suggestible and acquiescent. He was interviewed over five days for a total of 12 hours 42 minutes. A solicitor was engaged but was not allowed to be present during the first two interviews. He was present for the remainder but the audio-tapes indicated that he only intervened on one occasion, during the final interview (Pearse, 1997). Having denied the offence more than three hundred times, Mr. Miller made self-incriminating admissions after an interview which the Court of Appeal, having heard some of the audio-tapes, found horrific. In quashing Mr. Miller's conviction, the court made clear, following a case law tradition pre-dating *PACE* (*R. v. Priestley 1966*), that the impact of his difficulties had been taken into account.

Several of the sections of *PACE*, therefore, can be, and have been, used to exclude evidence obtained from suspects who are 'vulnerable', including those with learning disabilities (see Gudjonsson, 2003; Palmer and Hart, 1996; Zander, 1995, for more detailed discussions). In addition, though, reflecting its background in the Confait case (Fennell, 1994), there is particular provision for men and women with learning disabilities.

This provision is found in s. 77 of *PACE*. In the only qualification to the acceptability in English law of uncorroborated confession evidence, s. 77(1) states the court must warn the jury:

'that there is a special need for caution before convicting the accused in reliance on the confession'

when:

'(a) the case against the accused depends wholly or substantially on a confession by him; and

(b) the court is satisfied –

(i) that he is mentally handicapped; and

(ii) that the confession was not made in the presence of an independent person'.

It has generally been assumed that the 'independent person' is the Appropriate Adult of the Codes of Practice (Fennell, 1994; *R. v. Campbell 1995*) but, according to Palmer and Hart (1996, p.20 ff.), more recent Court of Appeal cases (*R. v. Bailey 1995*; *R. v. Lewis (Martin) 1996*) suggest that the two may not be entirely interchangeable. An Appropriate Adult is only required when a person with a learning disability makes a confession to a criminal offence during police detention and interviewing; an independent person should be present *whenever* someone with a learning disability confesses.

The uncertainty about the interpretation of this provision may reflect its very limited use. In contrast with other sections of *PACE*, the responsibility of convincing the court that the defendant has a learning disability and that his or her confession was made in the absence of the Appropriate Adult rests squarely on the defence, on the balance of probabilities (Mirfield, 1985, p. 166). Most cases where the issue of a warning under s. 77 might have been raised have been dealt with under ss. 76 or 78, with s. 77 used as a 'fallback' (Fennell, 1994; Zander, 1995).

Following a Court of Appeal judgment (*R. v. MacKenzie 1993)* involving a man of Borderline intellectual ability with a severe personality disorder who made a series of voluntary false confessions (Gudjonsson, 1992a, p. 243 ff; Gudjonsson, 2003), the Lord Chief Justice issued a Practice Note stating that where:

'(1) that prosecution case depends wholly upon confessions;

(2) the defendant suffers from a significant degree of mental handicap and

(3) the confessions are unconvincing to a point where a jury properly directed could not properly convict upon them,

then the judge…should withdraw the case from the jury' (*R. v. MacKenzie 1993*, p. 108).

Though it is more likely that Mr. MacKenzie's confessions reflected his personality disorder than his intellectual disadvantage, the decision in this case provides people with learning disabilities with a safeguard beyond those contained in *PACE* and the Codes of Practice. However, it appears that use of the Practice Note, like that of s.77, is very limited.

In practice, then, the only 'special' safeguard for people with learning disabilities is the poorly-drafted provision for an Appropriate Adult. Still, the legal framework provided by *PACE* and the Codes of Practice constitutes a formal acknowledgement by the criminal justice system that, compared with their counterparts in the general population, suspects with learning disabilities experience particular difficulties during police detention and interviewing. What is the nature of these difficulties? In all three versions of Code C of the Codes of Practice, it is stated that:

> 'although people who are…mentally handicapped are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information which is unreliable, misleading or self-incriminating' (Home Office, 1995a, Note 11B).

However, no systematic attempt has ever been made to examine *why* suspects with learning disabilities might be more 'vulnerable'. In the next chapter, a possible theoretical framework is presented which may enable this issue to begin to be addressed.

CHAPTER 2

'PSYCHOLOGICAL VULNERABILITIES' AND PEOPLE WITH LEARNING DISABILITIES

PACE and the Codes of Practice assert that people with learning disabilities are 'vulnerable' because they are at greater risk than their counterparts in the general population of providing information which is unreliable, misleading or self-incriminating. However, neither the legislation nor the guidance contain any attempt to specify the nature of this putative 'vulnerability'. Instead, it is assumed that any difficulties experienced by people with learning disabilities simply reflect the impairments in intellectual and social functioning which form part of the diagnostic criteria for the condition (American Association on Mental Retardation, 2002; British Psychological Society, 2001; Emerson et al., 2001).

In part, the lack of attention to exploring the putative 'vulnerability' of people with learning disabilities reflects a wider neglect of suspects and their experiences in the literature on police detention and interviewing (see Ch. 1.2). In contrast, the pioneering work of Irving and Hilgendorf (Hilgendorf and Irving, 1981; Irving and Hilgendorf, 1980) places suspects and their experiences at centre-stage. Based on an extensive review of the relevant psychological literature, they conclude that, whilst police interviews vary greatly (see Ch. 1.2), nevertheless, they all share a common characteristic. Inevitably, they always involve:

> 'a running series of decision tasks for the suspect' (Irving and Hilgendorf, 1980, p.13).

Since suspects also have to make (albeit less complex) decisions during the period preceding an interview (for example, choosing whether or not to exercise the legal rights), this conclusion also applies to detention. In the context of this thesis, Irving and Hilgendorf's (ibid.) work is very important: conceptualising suspects as active decision-makers encourages consideration of the factors, including the psychological factors, which may influence what they choose to do or not do.

Over the past ten years, Gudjonsson (1992a, 1993, 1994, 1999) has developed the concept of 'psychological vulnerabilities' as a framework through which to examine these psychological factors and their possible impact on suspects during police detention and interviewing. Since this influential framework provides the theoretical background for the exploration, in subsequent chapters, of the putative disadvantages during police detention and interviewing of people with learning disabilities, it is presented in detail here.

2.1 'PSYCHOLOGICAL VULNERABILITIES' AND POLICE DETENTION AND INTERVIEWING

2.1.1 'STATUS' AND 'FUNCTIONAL' APPROACHES

Attempts by psychologists to think about the difficulties which people with a 'mental disability', such as men and women with learning disabilities, may experience, compared with their 'general population' counterparts, in making everyday decisions such as decisions during police detention and interviewing have been dominated by two approaches: the 'status', or diagnostic, approach and the 'functional' approach.

The 'status' approach, which provides the rationale for the 'special provision' for people with learning disabilities and other 'vulnerable' groups under *PACE* and Code C, involves making inferences about individuals' decision-making based on identifying them as members of a population which is known, or suspected, to have some abnormality or impairment of functioning relative to the general population as a result of which clinical treatment or support is needed (see Grisso, 1986; Murphy and Clare, 1995). It is based on two assumptions: first, that groups sharing the same label or diagnosis are homogeneous and, secondly, that all decision-making contexts of a particular kind (for example, police interviews) are equally demanding. Neither of these assumptions is supported empirically (for example, among people with a 'mental disability': Grisso and Appelbaum, 1991, 1995; Marson, Schmitt, Ingram and Harrell, 1994; Morris, Niederbuhl and Mahr, 1993; Wong, Clare, Holland, Watson and Gunn, 2000; see also Ch. 1.2 for a summary of the evidence relating to variations between police interviews). Moreover, the approach itself is out of step both with accepted clinical 'good practice' (British Medical Association/The Law Society, 1995) and widely-supported proposals for changes in the English legal system to encourage people

with a 'mental disability' to make decisions for themselves, as far as possible (Law Commission (England and Wales), 1995; Lord Chancellor's Department, 1999).

In contrast, there is both clinical and legal, as well as increasing empirical, support for the 'functional approach', which has developed from pioneering work in the U.S.A. by Grisso, Appelbaum, and their colleagues (for example, Grisso, 1986; Grisso and Appelbaum, 1991, 1995, 1998; Hoge, Bonnie, Poythress, Monahan, Eisenberg and Feucht-Haviar, 1997). Whilst recognising the importance of the disadvantages summarised by a diagnosis indicating the presence of a 'mental disability', a functional approach does not focus *only* on the person's abnormalities or impairments. Instead, it proposes that any individual's ability to make decisions which further his or her personal goals reflects an interaction between:

- the person's 'functional abilities' (ibid., p. 15), that is, what he or she understands, knows, believes or can do which is directly relevant to a particular context (for example, being interviewed as a suspect during police detention rather than as a witness in court); and
- the extent to which these functional abilities meet the demands of a specific situation within a given context (for example, within the context of police detention and interviewing, being suspected of a minor property offence rather than the murder of a vulnerable person).

The implication is that, if difficulties are experienced, they may be alleviated either by by improving the person's relevant functional abilities and/or by simplifying or otherwise amending the decision-making situation.

Despite developing from a different background and using different terminology, Gudjonsson's (1992a, 1993, 1994, 1999) concept of 'psychological vulnerabilities' is, as will be seen, positioned within this functional approach.

2.1.2 THE CONCEPT OF 'PSYCHOLOGICAL VULNERABILITIES'

Gudjonsson's (1992a, 1993, 1994, 1999) concept of 'psychological vulnerabilities' developed from his experimental studies and his unparalleled clinical experience of assessments of men and women who have alleged that they have provided unreliable, misleading or self-incriminating information during questioning. The term refers to

psychological disadvantages which are likely to be of direct relevance in the context of police detention and interviewing in that they may:

'a) impair suspects' ability to understand their legal rights,

b) render suspects prone, in certain circumstances, to provide information which is unreliable or misleading' (Gudjonsson, 1994, p. 94).

Whilst it is possible that there may be a whole range of such vulnerabilities, Gudjonsson (1994, 1999) has proposed a typology of those which, from experimental evidence or on clinical grounds, appear most relevant to police detention and interviewing. These are:

1. **Mental Disorder**. This is interpreted broadly, as in s.1 of the *Mental Health Act 1983*, but it is suggested that three forms of such disorders are likely to be of particular importance:

   (i) 'mental illness' (typically, schizophrenia or a serious affective disorder) because it places individuals at increased risk of a breakdown in their ability to distinguish fact and fantasy (for example, through increasing feelings of guilt) and can affect their perception of the significance of a confession;

   (ii) personality disorder, which may, for example, increase the risk of false confessions in order to achieve notoriety (as in the cases of David MacKenzie, see Gudjonsson, 1992a, p. 243 ff., see Ch. 1.5 and Ch. 5.10; Judith Ward, Kennedy, 1992; *R. v. Ward, 1993*, see Ch. 5.1.1) or as part of a criminal lifestyle (Sigurdsson and Gudjonsson, 1997); and

   (iii) learning disability, which it is implied, increases the possibility that the suspect's psychological resources available will be insufficient to enable him or her to cope with the demands of police detention and interviewing.

2. **Abnormal Mental State**. This refers to mental states which are subclinical or transient and do not fall within the remit of the *Mental Health Act 1983* but are more likely to be purely psychological: they include high anxiety (as found by Gudjonsson et al., 1993; see Ch. 1.2), or, less often (Gudjonsson et al., 1993), specific phobias, such as claustrophobia. Intense emotional distress following bereavements involving family members (Gudjonsson, 2003) or friends (Gudjonsson and MacKeith, 1994) can also be relevant.

Abnormal mental states may also arise from medical conditions (such as diabetes or epilepsy), but perhaps of most importance is illegal drug-taking. Almost a quarter (22%, N = 173) of Gudjonsson et al.'s (1993) sample of detained persons reported using non-prescribed drugs in the previous twenty-four hours and 7% appeared, during the clinical assessment, still to be affected. A subsequent analysis indicated that these suspects were more than three times more likely than their non-reporting counterparts to confess to alleged offences (Pearse et al., 1998). Though there was no evidence, from this sample, to challenge the validity of their statements to the police, the findings of other studies suggest that withdrawal from opiate drugs is associated with heightened suggestibility (Murakami, Edelman and Davis, 1996), and, in some situations, can contribute to a false confession (Gudjonsson, 1992a).

3. **Personality Characteristics**. These include four characteristics which may be inadvertently or intentionally exacerbated or manipulated by the police during detention and interviewing:

   (i) *acquiescence* (a susceptibility to answer questions in the affirmative, regardless of their content; Cronbach, 1946);

   (ii) *interrogative suggestibility* (a tendency to be (mis)led by leading questions (Yield) and to give way to interrogative pressure (Shift); Gudjonsson, 1984 et seq.);

   (iii) *confabulation* (a tendency to replace gaps in memory with material which is distorted or fabricated; Baddeley, 1990; Berlyne, 1972; Gudjonsson, 1992a; Mercer, Wapner, Gardner and Benson, 1977; Register and Kihlstrom, 1988). This may be particularly frequent in people with personality disorder; and

   (iv) *compliance* ('the tendency of the individual to go along with propositions, requests or instructions for some immediate instrumental gain' (Gudjonsson, 1992a, p. 137) regardless of his or her own preferences (Gudjonsson, 1989a et seq.).

In the context of police detention and interviewing, each one of these 'psychological vulnerabilities' may be relevant. Alternatively, they may combine together, in association with another of the same class (for example, acquiescence and suggestibility, which are theoretically related, Gudjonsson, 1992a), or, most often, with others of

different classes, so that the detained person is multiply disadvantaged. The case of Engin Raghip illustrates how the interaction of a number of 'psychological vulnerabilities' and the circumstances of detention and interviewing may lead to a miscarriage of justice involving an innocent person.

2.1.3 THE IMPORTANCE OF 'PSYCHOLOGICAL VULNERABILITIES'

In 1987, Engin Raghip, then aged 21 years, was sentenced to life imprisonment for his involvement in the murder of P.C. Blakelock during the disturbances at the Broadwater Farm Estate, in London, two years earlier (see Gudjonsson, 1992a, pp. 309-313, 2003, for further details). The only evidence against him was the self-incriminating admissions which he had made whilst he was detained and interviewed by the police. He remained in prison until 1991, when his conviction was quashed by the Court of Appeal.

Though Mr. Raghip did not have a diagnosis of a 'learning disability' or any other 'mental disability', he had a history of academic difficulties and, during childhood, was transferred from mainstream to 'special' educational provision; however, he did not attend. After leaving school, he moved in with his partner and the couple had a baby. His partner provided Mr. Raghip with considerable support in the tasks of everyday life. However, shortly before he was arrested by the police, she left him, taking the baby with her. Mr. Raghip became distressed and had difficulty sleeping. He was eating poorly and was drinking heavily and smoking cannabis.

When Mr. Raghip was detained by the police, *PACE* was being piloted but had not been introduced formally. He was interviewed on ten separate occasions lasting over fourteen hours across five days. Though it was recognised that he was unable to read, he was not provided with an Appropriate Adult; he was also refused access to a solicitor. During his detention, he complained of feeling unwell and vomiting after meals. He was examined on two occasions by a police surgeon and found to have a mild fever and enlarged neck glands. On the third day after his arrest, he was taken before a Magistrates' Court for permission to prolong his detention. He spoke briefly to a solicitor, appearing distressed and saying that he could not cope further. The Magistrates recommended that a solicitor should be present during further interviews; this did not

happen. Subsequently, he made the admissions which led to the charge of murder and his subsequent conviction.

After Mr. Raghip's conviction, he tried to appeal, but leave was initially refused, in part because his tested level of intellectual ability lay above what was then the accepted 'cut-off' (IQ: 69) for the admissibility of psychological evidence about intellectual disadvantage. After the failure of the application for leave to appeal, Mr. Raghip's solicitor asked the psychologist who had carried out the pre-trial assessment to comment on the discrepancy between the low Shift score on the Gudjonsson Suggestibility Scales (Gudjonsson, 1984 et seq., 1997) his client had obtained then and the findings of a subsequent assessment, by a different person (Professor Gisli Gudjonsson). The second assessment indicated that Mr. Raghip was in fact very susceptible to changing his responses under pressure. Actually, the difference was easily explained. In contrast with his demeanour during the second assessment, when he was first assessed he had appeared 'angry and suspicious' (Gudjonsson, 1992a, p. 312); anger and suspiciousness are among the conditions which reduce suggestibility (Gudjonsson, 1989b; see Ch. 5.5.1). The second assessment also indicated that he was compliant (Gudjonsson, 1989a et seq.), had low self-esteem, and high state and trait anxiety. In addition, through interviews with his partner carried out by a third psychologist, it was clear that he needed support in all the more complex tasks of everyday life.

Subsequently, the psychologist who had carried out the first assessment stated publicly that he agreed with his colleagues' more recent findings, allowing the defence to make a submission to the Home Secretary for a further appeal hearing. The case was eventually sent back to the Court of Appeal, and Mr. Raghip was freed.

The self-incriminating admissions made by Mr. Raghip appear to have reflected long-standing 'psychological vulnerabilities', including:

- limited intellectual ability and literacy skills;
- low self-esteem and high anxiety;
- marked compliance;
- susceptibility to challenges to his initial responses to questions; and
- limited social functioning.

The effects of these long-standing disadvantages may have been exacerbated by the effects of the transient physical and mental health problems which he experienced just before, and during, the period of his detention. It is suggested by Gudjonsson (1992a, 2003) that these psychological factors *interacted* with the taxing conditions in which he was detained and interviewed (he was held over a long period without access to a solicitor or an Appropriate Adult, by officers who were, without doubt, emotionally distressed by the murder of their colleague) to undermine Mr. Raghip's ability to withstand pressure from the police.

The events which led to the miscarriage of justice involving Mr. Raghip are, thankfully, unusual. Unfortunately, it is often assumed, particularly by defence solicitors, that suspects with 'psychological vulnerabilities' are inevitably more likely to provide information which is unreliable, misleading or self-incriminating (Gudjonsson, 1999). This assumption is not supported: in the only study which has attempted to relate suspects' 'psychological vulnerabilities' during police detention to the outcome of their interviews, Pearse and his colleagues (Pearse et al., 1998) found that those detained persons who had been deemed to be 'vulnerable' by clinicians (for details of the assessment, see Gudjonsson et al., 1993) were no more likely than their counterparts to make self-incriminating admissions.

The generalisability of these findings is, however, uncertain. First, as already noted (see Ch. 1.2), the interviews in these 'run-of-the-mill' cases were not particularly demanding (Pearse and Gudjonsson, 1996), at least from an outsider's perspective. 'Psychological vulnerabilities' may have more influence in serious cases, where police interviewing is generally much more challenging (Pearse and Gudjonsson, 1999). Secondly, the majority of the 'vulnerable' suspects (70%, N=28) in the study by Pearse and his colleagues (Pearse et al., 1998) were supported by a legal adviser. Now that the right to silence has been modified, the practical importance of this support (Baldwin, 1992; Leng, 1993; McConville and Hodgson, 1993; Moston et al., 1993; Pearse and Gudjonsson, 1997) has probably been enhanced (Bucke et al., 2000), even in 'routine' cases.

Nevertheless, consistent with the positioning of the concept of 'psychological vulnerabilities' within a functional, rather than a status, approach to understanding the

provision of unreliable, misleading or self-incriminating information by suspects during police detention and interviewing, Gudjonsson (1993) concludes that:

> '(w)hat is important is that any psychological and psychiatric findings relevant to vulnerabilities must be interpreted and placed within the context of the totality of evidence in the case' (ibid., p.125).

2.2 'PSYCHOLOGICAL VULNERABILITIES' AND PEOPLE WITH LEARNING DISABILITIES

Gudjonsson's (1994, 1999) typology of 'psychological vulnerabilities' includes 'learning disability' as one of the forms of 'mental disorder' but he does not specify in any detail how the diagnosis, and the disadvantages it summarises (including impairments in memory, problem-solving, literacy, comprehension and expression of verbal language, abililty to 'read' social interactions particularly in conditions where there is a marked imbalance of power, and so on; see Murphy and Clare, 1995) may affect the ability to cope with the demands of police detention and interviewing. Other accounts based on clinical experience and/or analyses of individual cases, including proven miscarriages of justice, are no more specific (Ellis and Luckasson, 1985; Gudjonsson and MacKeith, 1994; McGee and Menolascino, 1992; Perske, 1994, 2001). Elsewhere, however, Gudjonsson (1992a) draws on the available experimental literature to propose three putative domains in which, because of the developmental delay and the impairments of intellectual and social functioning which define the condition, adults with learning disabilities may be more likely than their 'general population' counterparts to have 'psychological vulnerabilities':

(i) understanding of the caution and legal rights;

(ii) ability to 'use' information to make decisions in interviews;

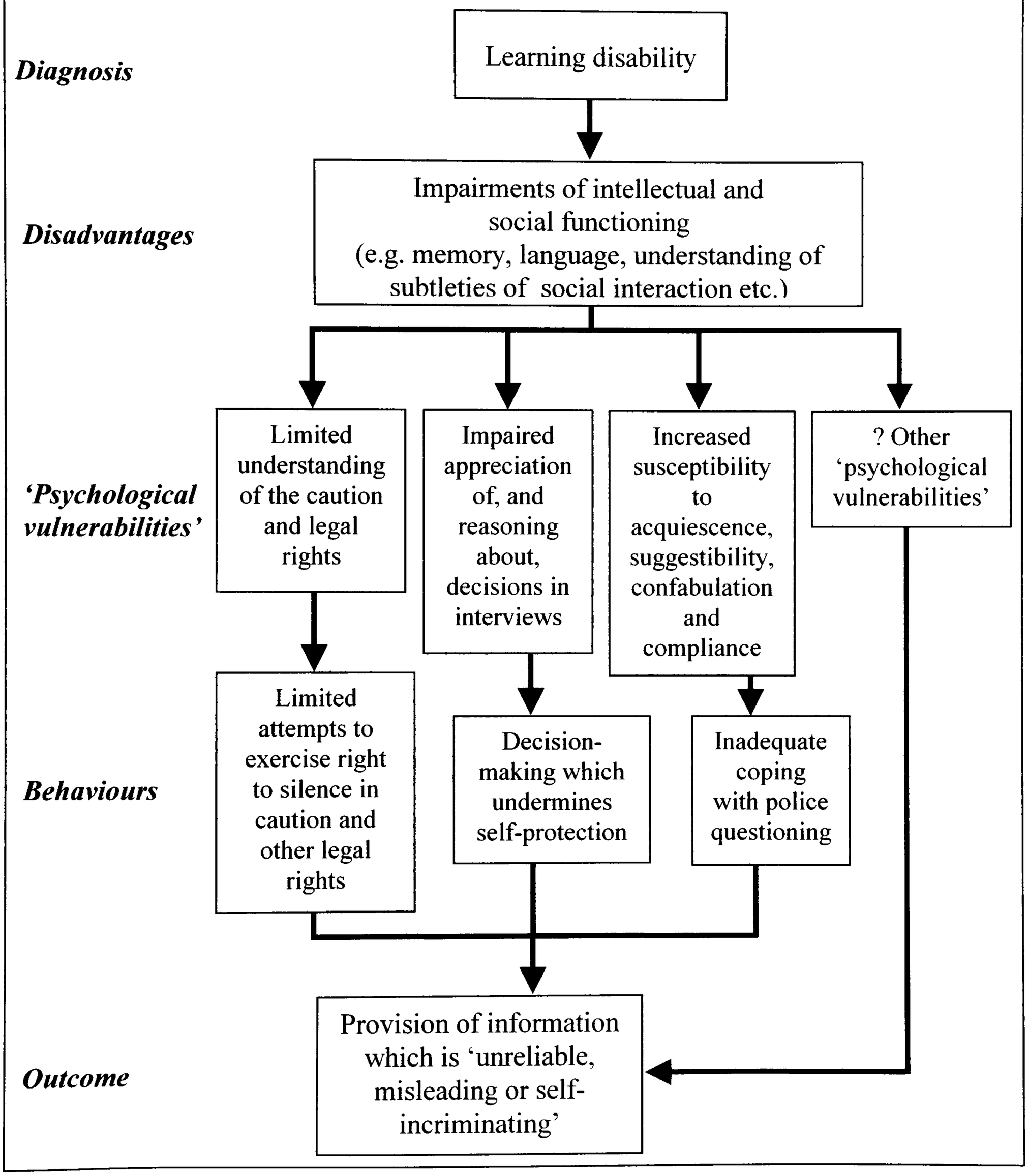
(iii) acquiescence, suggestibility, confabulation and compliance.

Unfortunately, though, Gudjonsson's (1994, 1999) accounts of the possible impact of these 'psychological vulnerabilities' - by impairing suspects' ability to understand their legal rights and increasing the likelihood that they will provide information which is unreliable or misleading (see Ch. 2.1.2) – are insufficiently detailed. Figure 2.2.1 presents an expanded version of Gudjonsson's framework which is intended to clarify the process through which people with learning disabilities may become 'vulnerable'

suspects under *PACE* and its guidelines, 'at risk' of providing information which is unreliable, misleading or self-incriminating.

According to this framework, the *diagnosis* of learning disability is defined by a history of developmental delay, together with significant impairments of intellectual and social functioning (American Association on Mental Retardation, 2002; British Psychological Society, 2001; Emerson et al., 2001). These impairments are *disadvantages* which, in the context of police detention and interviewing, place people with learning disabilities at greater risk than their counterparts in the general population of experiencing *'psychological vulnerabilities'*. Such 'vulnerabilities' may, in certain circumstances, lead to *behaviours* which result, either directly, or indirectly through the limited exercise of the caution and legal rights, in the *outcome* of an increased likelihood of providing information which is unreliable, misleading or self-incriminating. In turn, this may, on occasion, end in a miscarriage of justice involving an innocent person.

Figure 2.2.1 An expanded version of Gudjonsson's framework, clarifying the possible role of the three 'psychological vulnerabilities' explored in this thesis (see Ch.2.2. and Ch. 2.3)



2.3 OUTLINE OF THE THESIS

The work described in this thesis was prompted by changes in social policy. For much of the last century, people with learning disabilities were often placed in institutions and alleged offenders rarely came into contact with the criminal justice system. Now that social care is normally based within community-based settings, traditional practice is changing and it is becoming increasingly recognised that, when an alleged offence has taken place, the police should be involved. It is no longer acceptable to ignore the alleged offence, or to invoke informal sanctions which may abuse the civil rights of alleged perpetrators and may even contravene the *Human Rights Act 1998*. At the same time, the *Youth Justice & Criminal Evidence Act 1999* states a commitment to provide access to justice for alleged victims, particularly victims who are themselves 'vulnerable'. It seems likely, then, that increasing numbers of people with learning disabilities will have the experience of being detained and interviewed by the police.

Many people with learning disabilities, like their counterparts in the 'general population', engage in behaviour which could constitute a criminal offence. However, a crime is not defined simply by a behaviour or its consequences (*actus reus*). Other 'ingredients' must be present. One of the most important is a guilty 'state of mind' (*mens rea*) relating to the behaviour (such as intention, recklessness and so on). Sometimes, it is clear that one or more of these ingredients is missing (see Carson, 1995). The likelihood both of fulfilling the criteria for a crime and of being involved meaningfully in the criminal justice system is much greater for people with *mild* learning disabilities; in any case, they form the overwhelming majority of individuals with learning disabilities (Emerson et al., 2001).

If people with learning disabilities are, indeed, more likely than their 'general population' counterparts to be 'vulnerable' as suspects, then the nature of this vulnerability needs to be explored so that strategies can be devised and implemented to minimise their impact. The next three chapters of this thesis describe attempts to use psychological methods to explore the three putative 'psychological vulnerabilities' shown in Figure 2.2.1 among people with mild learning disabilities. In each study, the performance of the participants with learning disabilities is compared experimentally with that of their counterparts in the general population.

In Ch. 3, three studies are reported which examine recall and understanding of the information (the *Notice to Detained Persons*) presented to suspects to advise them of the caution and legal rights in police detention. To anticipate the results, the findings suggest that the material is too complex for people with learning disabilities but, worryingly, it is also too difficult even for their counterparts in the general population. In Ch. 4, a different 'psychological vulnerability' is addressed. The development of an innovative experimental methodology is described which is then used to investigate the decision-making of people with learning disabilities and to examine the specific hypothesis that their perceptions of a police interview differ from those of their 'general population' counterparts. Next, in Ch. 5, established measures are used to examine whether men and women with learning disabilities are more susceptible to acquiescence and suggestibility. As expected, they are more acquiescent and more likely to be (mis)led by leading questions. However, they are not more likely to change their answers in response to interrogative pressure. Then, confabulation is explored: though, surprisingly, when distortions and fabrications are considered together, people with learning disabilities are not more likely to confabulate, their recall contains proportionately more incorrect information. Finally, the potential relevance of compliance is reviewed and the importance of developing a methodology to assess this personality characteristic is emphasised.

The findings of these three chapters, then, indicate that, though there are wide variations in the responses of the participants with mild learning disabilities, overall they are more likely than their peers in the general population to experience each of the three 'psychological vulnerabilities' considered in this thesis. The implication is that, as suspects, they would, as *PACE* and its accompanying guidelines assert, be more likely than their 'general population' counterparts to provide information during police detention and interviewing which is inadvertently unreliable, misleading or self-incriminating.

In Chs. 6 and 7, two practical initiatives to alleviate this 'vulnerability' are described. In Ch. 6, a series of four studies describes the development and evaluation of an experimental version of the *Notice to Detained Persons* which is intended to be more accessible to *all* suspects, including people with learning disabilities. Despite results which are initially encouraging, a more stringent evaluation shows that the attempt to

devise a less complex version of the caution and legal rights is unsuccessful. In contrast, the initiative described in Ch. 7 has a better outcome. A screening questionnaire was developed and piloted to enhance the identification of 'vulnerable' criminal suspects, including people with learning disabilities, by the police. This questionnaire has now been introduced as a formal part of the 'booking in' procedures at all police stations in the Metropolitan Police District.

Finally, in Ch. 8, the implications of the findings for minimising the likelihood of miscarriages of justice involving innocent people with learning disabilities are discussed. The theoretical framework provided by Gudjonsson's (1992a, 1993, 1994, 1999) concept of 'psychological vulnerabilities' is revisited and it is argued that placing 'psychological vulnerabilities' within a capacity-based approach (Law Commission, 1995; Lord Chancellor's Department, 1999) would encourage the further development of Gudjonsson's insights.

2.4 METHODOLOGICAL CONSIDERATIONS

2.4.1 PARTICIPANTS WITH 'LEARNING DISABILTIES'

Terminology

In this thesis, 'people first' terminology will be used, so that the condition will be referred to as a 'learning disability' (Department of Health, 1991), and an individual who fulfils the criteria for the condition as a 'person with a learning disability'; in the plural, they will be 'people with learning disabilities'.

'Mental handicap' under *PACE* and 'learning disability'

So far, 'mental handicap', as defined under s. 77(3) of *PACE* and 'learning disability' (British Psychological Society, 2001) have been treated as if they were equivalent. Indeed, the multi-disciplinary working-party convened by the Home Office (Home Office, 1995b) recommended that, the 'learning disability' should replace the (now obsolete) 'mental handicap' in the current Codes of Practice (Home Office, 1995a); this recommendation was not accepted.

However, there are some significant differences in the way the terms are used by the courts and in health and social care services. Normally, in health and social care, the 'significant impairment of intellectual ability' is taken to be an intelligence quotient (IQ) score more than two standard deviations below the mean (that is, below 70) on an established test (such as, in the past, the Wechsler Adult Intelligence Scale – Revised, WAIS-R, Wechsler, 1981; now, the Wechsler Adult Intelligence Scale-III^{UK}, Wechsler, 1997). The courts' interpretation of the intellectual functioning 'arm' of the definition used to be the same: in *R. v. Masih 1986*, the Lord Chief Justice stated that 'mental handicap' was defined by a Full Scale I.Q. score of 69 or below. However, in *R. v. Silcott, Braithwaite and Raghip 1991*, the Court of Appeal broadened the criteria. It was accepted that, notwithstanding that his most recent IQ score was 74 (Borderline), Mr. Raghip fulfilled the criterion for a 'significant impairment of intellectual functioning'. The judges were:

> 'not attracted to the concept that submissions...should be governed by which side of an arbitrary line, whether 69/70 or elsewhere, the IQ falls' (quoted, from the judgement, by Gudjonsson, 1992b, p. 249).

Subsequent case law (for example, *R v Kenny 1994*) has supported this interpretation. Indeed, in *R v Long 1995* (cited in Gudjonsson, 2003), 'mental handicap' was used by the Court of Appeal as grounds for quashing a conviction for murder of a man whose intellectual functioning lay in the High Average range but who made self-incriminating admissions in the context of a serious depression.

Whilst the developing approach of the courts is consistent with their discretionary powers to exclude evidence under s.78 of *PACE* (see Gudjonsson, 2003, for a detailed discussion), since the participants in this study were not involved in the criminal justice system, the criteria for inclusion were based more closely on those in use in health and social care services.

Criteria for inclusion

All the participants in the studies reported in this thesis were adults (i.e. at least 18 years old), and were verbally fluent in English.

The participants with a learning disability were selected as an 'administrative' sample and everyone was attending designated day services. For practical reasons, it was not

possible to obtain detailed developmental histories or information about their current social functioning. However, 'proxy' measures of these criteria were obtained by asking prospective participants whether:

a) they had attended a mainstream secondary school or had any academic qualifications; and
b) they were living independently.

In addition, intellectual functioning was assessed using the Wechsler Adult Intelligence Scale – Revised (WAIS – R, Wechsler, 1981), which was the standard test at the time the studies were carried out. Based on the upward shift in the IQ of populations over time (Crawford, Gray and Allen, 1995), a significant impairment of intellectual ability was operationalised as a (complete or pro-rated) Full Scale IQ score ≤ 75. To try to ensure that participants were people with mild, rather than severe, disabilities, individuals who scored zero on one or more of the sub-tests of the WAIS-R were not involved further: in practice, this meant that everyone had a Full Scale IQ score ≥ 55. In summary, then, the participants with learning disabilities:

- were attending designated day services for people with learning disabilities;
- had not attended mainstream secondary schools and did not have any academic qualifications;
- lived with their parents or were supported by paid carers;
- had Full Scale IQ scores < 76 and > 54.

To fulfil the criteria for inclusion in a 'general population' comparison group, used in some of the studies, prospective participants had *not* to be attending day- or residential-provision for people with a learning disability and had to have a tested Full Scale IQ score of ≥ 80 on the WAIS-R.

2.4.2 PARTICIPANT SELECTION AND RANDOMNESS

Since different participants sometimes took part in different studies, their details are given separately for each study. A summary of the participants' involvement in different studies is shown as Appendix 2.

The participants were a convenience sample, comprising men and women who were colleagues or acquaintances or attended day or residential services which were willing to support the studies; in this sense, the sample was not 'truly random'.

2.4.3 ETHICAL APPROVAL

Ethical approval for each of the studies was obtained from the Ethics Committee of the Institute of Psychiatry.

CHAPTER 3

UNDERSTANDING OF THE CAUTION AND LEGAL RIGHTS PRESENTED IN THE *NOTICE TO DETAINED PERSONS*

Under *PACE*, suspects receive oral information about the caution and legal rights. They are also offered standardised written information in the form of a 'leaflet', Form 3053, the *Notice to Detained Persons*. This was introduced with the Codes of Practice (Home Office, 1985b, 1991, 1995a, 2002a, b). In 1991, the original version of the leaflet was amended slightly, primarily to incorporate the material about the right to legal advice previously provided separately by the Law Society. In 1995, the leaflet was amended again. This new version reflected the introduction of the new caution but there were no other changes to the wording, and the format has remained unchanged since. In the written leaflet, the caution is reiterated, as is the basic information about the three rights (the right to have someone informed of the arrest, to consult a solicitor, and to consult the Codes of Practice), which are then also explained in more detail. The fourth right - the right to a copy of the Custody Record - is also outlined and explained.

The caution and rights are of legal and practical significance. Breaches of Code C of the Codes of Practice are often taken seriously by the courts in deciding upon the admissibility of evidence (see Ch. 1.5). These legal judgements reflect the practical importance to detained persons of the caution and legal rights (Baldwin, 1992; Gudjonsson and Petursson, 1991; Leng, 1993; McConville and Hodgson, 1993; Moston et al., 1993; Pearse and Gudjonsson, 1997; Pearse et al., 1998) in protecting them from inadvertently making self-incriminating statements.

According to Gudjonsson (1992a, 1993, 1994, 1999), one of the 'psychological vulnerabilities' of people with mild learning disabilities is their impaired understanding of the information about the caution and legal rights presented in the *Notice to Detained Persons*. The purpose of this chapter is to report three small experimental studies intended to examine this issue. During the course of the investigations, there have been

three different versions of the *Notice to Detained Persons*, each presenting a different form of the caution and/or the legal rights. For clarity, these are invariably referred to as:

1. *Original*: the version which was introduced in England and Wales on 1st January, 1986, and remained in use until 31st March, 1991;
2. *Revised*: the version which was introduced on 1st April, 1991, and remained in use until 31st March, 1995;
3. *Current*: the version which was introduced on 1st April, 1995 and is currently in use. This is identical to the *Revised* version, except that it includes a new form of the caution, introduced to accompany the modification of the right to silence. The current caution was preceded by a *Draft* which was proposed but was not introduced.

3.1 BACKGROUND

3.1.1 THE IMPORTANCE OF UNDERSTANDING INFORMATION

Unless people understand the information given to them about the caution and their legal rights, they will not be able to make an informed decision about whether to request the safeguards which are intended to protect suspects. Theoretical analyses of the abilities involved in making valid legally-significant decisions about the person (such as whether to give or withhold consent to a healthcare intervention or a sexual relationship) have suggested that understanding of information relating to the decision is necessary, though not sufficient (Appelbaum and Grisso, 1988, 1995; Grisso and Appelbaum, 1998; Law Commission, 1995).

However, it has been argued that 'understanding' is a term whose 'meaning is fuzzy and imprecise' (Kintsch, 1998, p. 2). In the past, it has been regarded as comprising *both* the comprehension of information and its relevance to a particular situation (Buchanan and Brock, 1989; Faden and Beauchamp, 1986). More recently, however, theoretical analyses, supported by both case law and empirical evidence, have made a distinction between these two senses of the word (Appelbaum and Grisso, 1988, 1995; Glass, 1997; Grisso and Appelbaum, 1998; Law Commission, 1995; Lord Chancellor's Department, 1999; *Re C (Adult: Refusal of Treatment) 1994*). Now, the use of 'understanding' is

restricted to the ability to 'comprehend the fundamental meaning of information' (Appelbaum and Grisso, 1988, p. 1636).

Comprehension of the meaning of information involves complex psychological processes. Grisso and Appelbaum (1998) have proposed that:

> '(f)irst the information must be received as presented, a process that is influenced not only by sensory integrity, but also by perceptual functions such as attention and selective awareness. Whatever is received then undergoes cognitive processing and is encoded in a manner consistent with the person's existing fund of information and concepts, which in turn influences how, and how well, the message is recorded and stored in memory' (ibid., p. 38).

According to this account, which is supported by others (Keeley, 1995; Coles, Freitas and Tweed, 1996), knowledge can be assessed by asking a person simply to reproduce information, but the assessment of understanding requires the individual to demonstrate that more complex processing has taken place.

A number of psychological methodologies, drawing from earlier work on the assessment of educational achievements, have been devised, particularly by Grisso and his colleagues in the U.S.A., for eliciting understanding of information relevant to legally-significant decision-making. These methodologies include:

- paraphrased recall of the information, presented in its entirety and/or as discrete elements (Fulero and Everington, 1995; Grisso, 1981; Grisso and Appelbaum, 1991, 1998; Grisso, Appelbaum, Mulvey and Fletcher, 1995; Gudjonsson, 1990a, 1991a; Hoge et al., 1997);
- paraphrased recall of single key words (Fulero and Everington, 1995; Grisso, 1981);
- identification of sentences as the 'same' as or 'different' from those in the information (Grisso, 1981; Grisso and Appelbaum, 1991; Hoge et al., 1997);
- questionnaires (Gudjonsson et al., 1993);
- structured and semi-structured interviews (Arscott, Dagnan and Stenfert Kroese, 1998, 1999; Morris et al., 1993),
- non-verbal demonstration (Wong et al., 2000).

Each of these methodologies has particular strengths and weaknesses: for example, paraphrased recall may underestimate comprehension because of its dependence on

skills in verbal expression; in contrast, identifying sentences requires very limited verbal skills but does not necessarily require people to understand information. To minimise this problem, large research studies, such as those of Grisso and Appelbaum and their colleagues (e.g. the MacArthur Treatment Competence Study, Grisso et al., 1995; the MacArthur Adjudicative Competence Study, Hoge et al., 1997) have used multiple indicators of the same abilities. For everyday use, however, much less elaborate assessment measures have had to be devised (e.g. the MacArthur Competence Assessment Tool-Treatment, Grisso and Appelbaum, 1998).

Grisso and Appelbaum's (1998) summary suggests that understanding involves several skills. Individuals whose intellectual functioning has not yet developed fully (children and young people) or is impaired, temporarily or permanently, as a result of a mental disorder may be at particular risk of impairments in their understanding. A number of studies have investigated this hypothesis in relation to the caution and legal rights, or their equivalent, in particular jurisdictions.

3.1.2 PREVIOUS STUDIES OF UNDERSTANDING OF THE CAUTION AND LEGAL RIGHTS

The pioneering study of understanding of the legal rights was carried out in the U.S.A. by Grisso (1981) who investigated adolescents' waivers of the *Miranda* rights. The *Miranda* rights take their name from a famous case - *Miranda v. Arizona*, 384, U.S. 436 (1966) – in which the U.S. Supreme Court ruled that suspects must be provided with certain information before being interviewed formally by the police (and at other stages, not of concern here). Though no standardised version has been developed, this information must advise suspects of: (i) the right to silence; (ii) the potential use of any statement as evidence in court; (iii) the right to legal advice; and also (iv) that this legal advice is free of charge. Confessions are only admissible in court if a) the suspect has received this information, and b) has 'waived', or relinquished, the safeguards which it provides 'voluntarily, knowingly, and intelligently'.

In contrast with England and Wales, where the suspects must request their legal rights, in the U.S.A. it seems to be assumed, following *Miranda*, that the rights will be exercised. It may be surprising, then, that about half of all adult suspects *waive* their right to silence (42%, Seeburger and Wettick, 1967, cited in Grisso, 1986). Based on the

criteria adopted by the courts in making decisions about the validity of these waivers, Grisso (1981) developed a set of tasks, using well-standardised and operationalised methodologies, for assessing understanding and appreciation of the version of the rights used in Missouri.

One of the tasks involved paraphrasing each of four *Miranda* items, as they were presented in turn (the *Comprehension of Miranda Rights*, *CMR*; see also Grisso, 1986). Grisso (1981) compared the performance on the *CMR* of adult offenders (aged at least 17 years), living in rehabilitation hostels, and non-offenders (since there were no differences between the groups, their data were combined, N=260) with that of young people (N=431) held in custody following alleged or proven 'felonies' (serious offences). Intellectual ability was prorated from the Vocabulary, Similarities, and Block Design sub-tests of the adult or child versions of the Wechsler scales (Wechsler, 1955, 1974): the mean IQ of the two adult groups combined was 89.9 (s.d. 13.0), and 86 (s.d. 16.3) for the adolescents.

Two findings are of particular importance here. First, overall, about one quarter (23.1%) of the adults demonstrated inadequate understanding of at least one of the four items, as did more than half the adolescents (55.3%). For both groups, understanding was not related to experience of arrest. Secondly, at all ages, performance was significantly related to intellectual ability. The most intellectually disadvantaged persons (IQ $\leq$ 70) demonstrated the poorest level of understanding. The extent of this impairment was very striking: the mean scores of the least able adults were no better than those of 10-12 year olds of average ability (Grisso, 1981).

A second task required the same participants to explain the meaning of key words (the *Comprehension of Miranda Vocabulary*, *CMV*, see also Grisso, 1986). Most of the words (e.g.'consult', 'attorney') are exclusive to the U.S.A. but the word 'right' occurs in both the *Miranda* items and the information presented orally and in the 'Notice to Detained Persons' in England and Wales. This was presented as:

'Right. You have the right to vote' (Grisso, 1981, p. 238)

followed by a question in the form: 'Can you tell me more about what right means?' or 'How do you mean - - -?' (ibid. p. 238). Fewer than half (43.1%) the adults, and only one quarter (26.7%) of the juveniles provided adequate definitions: the majority seemed

not to understand that it provided a safeguard for them but was merely something which was 'allowed'. Consistent with the *CMR* results, understanding of a 'right' was significantly related to intellectual ability, with the most intellectually disadvantaged participants again performing most poorly.

More recently, the tasks developed by Grisso (1981) have been used by Fulero and Everington (1995) to examine understanding of the *Miranda* rights among two groups of adults with learning disabilities. The first group (N=29), the 'non-offenders', had all received diagnoses of 'mild to moderate mental retardation' (ibid., p. 536; no data on intellectual ability provided) and were attending specialist day-services; 10 per cent had convictions for minor offences. The second group (N=25), the 'offenders', had similar diagnoses (mean Full Scale IQ scores on the Wechsler Adult Intelligence Scale-Revised, WAIS-R, Wechsler, 1981: 65 (no other details given)) and had all received probation orders following a conviction for a criminal offence; 96 per cent had been convicted previously.

As expected, on the measures of understanding described, the performance of both the groups of people with learning disabilities was poorer than that of both the adolescents and the adults in Grisso's (1981) study. The extent of their impairment was very striking. On the *Comprehension of Miranda Rights*, the overwhelming majority (90%) of the 'nonoffenders' and two-thirds (68%) of the 'offenders' were unable to demonstrate adequate understanding of one or more of the rights. Similarly, the majority of both the 'nonoffenders' (83%) and the 'offenders' (56%) were unable to offer any reasonable explanation of the 'rights' item of the *Comprehension of Miranda Vocabulary*. At odds with Grisso's (1981) original findings, the participants who were on probation performed slightly better than their 'nonoffender' counterparts. Though this might reflect their greater experience of the criminal justice system, an alternative explanation, proposed by Fulero and Everington (1995), though without any assessment, is that individuals who had proceeded through the criminal justice system were more intellectually advantaged.

Other studies have drawn on Grisso's (1981) methodology to investigate understanding of the safeguards for suspects in particular jurisdictions. Cooke and Philip (1998) carried out an assessment of the Scottish caution. Though there is no standardised

wording in Scotland, legally it must contain the same key elements as the pre-1995 caution in England and Wales. In other words, suspects should be advised prior to interviewing of their right to silence, and the potential for what they say to be used as evidence. Understanding of the caution was assessed among 100 young offenders (mean age: 18 years, range: 16-21 years), imprisoned following conviction. The mean pro-rated IQ of the sample was 87 (range: 64-123). Despite the confidence of the participants (89% of whom claimed to understand the caution completely), only one in ten (11%) paraphrased the information correctly when it was presented in its entirety; almost a quarter (24%) demonstrated no understanding. Similarly poor levels of understanding were shown on tasks which were adapted from those devised by Grisso (1981). Again, as expected, understanding throughout correlated with intellectual ability, but not with the number of self-reported police interviews or criminal offences.

Grisso's (1981) tasks have also been adapted to assess the information presented to suspects in Canada (the Test of Charter Cautions, Olley and Ogloff, 1993). Though the Canadian safeguards are rather different from those of England and Wales (see Whittemore and Ogloff, 1994), intellectual ability and education were correlated with understanding; experience of the criminal justice system (imprisonment on remand or following sentencing) was not.

The main results of all these studies are consistent. As expected from reports of clinical cases (Gudjonsson, 1992a; Stricker, 1985), they indicate that, regardless of experience of contact with the criminal justice system, understanding of the caution and rights is associated with intellectual ability but cannot be assessed accurately by self-report. The implication is that, as Gudjonsson (1992a, 1993, 1994, 1999) suggested, impaired understanding of the caution and the legal rights may be a 'psychological vulnerability' for people with learning disabilities.

However, though people who are intellectually disadvantaged appear to have more serious difficulties understanding their rights as suspects, their problems need to be seen in the context of apparently widespread difficulties among the general population participants in Grisso's (1981) study. This suggests that the information on the *Miranda* rights may simply be too difficult. Theoretical analyses of decision-making emphasise that a test of understanding is inadequate unless the information relevant to the

particular decision has been presented in everyday terms (Appelbaum and Grisso, 1988, 1995; Grisso and Appelbaum, 1998; Law Commission, 1995, para. 3.18; Lord Chancellor's Department, 1999) that is, in 'broad terms and simple language' (s.2 (3), draft Bill on Mental Incapacity, Law Commission, 1995).

In the present context, the implication of the phrase 'in broad terms and simple language' is that it is not acceptable to provide information in the *Notice to Detained Persons* which is too difficult for people of average intellectual ability. In order to develop appropriate strategies to assist people with learning disabilities who come into contact with the criminal justice system as suspects, it is important to know whether the information itself is too complex.

The first study to investigate the complexity of the *Notice to Detained Persons* was carried out by Gudjonsson (1990a, 1991a). He examined the original version (Home Office, 1985b) in two ways. First, using an objective measure, the Flesch Formula (Flesch, 1948), which had been used previously for legal (Sherr, 1986) and medical (Ley, 1977) materials, he analysed the 'Reading Ease' of the four paragraphs explaining the rights in detail (i.e. excluding the caution). Though there was some variation between the different paragraphs, overall they appeared very complex, with an average score of 50 ('difficult') on a scale from 0 ('very difficult') to 100 ('very easy'). Using Ley's (1977) translation of the index, a *crude estimate* would be that a Full Scale IQ score of at least 111 would be needed to understand the original *NDP* fully. Fewer than one person in four of the general adult population would be expected to understand it in its entirety.

Since factors apart from the complexity of the language in which the leaflet is written might influence comprehension in everyday life, Gudjonsson (1990a, 1991a) supplemented the objective analysis with an exploratory experimental assessment of understanding among convicted offenders (N=15; mean Full Scale IQ: 82; range: 63 to 98). All were attending in-patient or out-patient forensic mental health services and none had seen the original version of the *NDP* before. Understanding was assessed using a version of the paraphrased recall developed, independently, by Grisso (1981). It has been suggested (Coles et al., 1996) that:

> 'asking people to rephrase or put in their own words a given statement is an excellent method of determining whether they understand what was said to them, rather than merely knowing or remembering the words spoken to them' (ibid., p. 189).

Each sentence was understood by a mean of just over half (59%) of the participants. Though apparently 'most' (Gudjonsson, 1991a, p. 93) of the participants understood the right to legal advice, only one person (with a Full Scale IQ (FSIQ) of 91 and a specific interest in legal materials) demonstrated understanding of all eleven sentences. As expected from the studies in other jurisdictions (Cooke and Philip, 1998; Grisso, 1981; Olley and Ogloff, 1993), understanding was very significantly correlated with intellectual ability. Importantly, given its legal significance, the caution was not explained adequately by the two people who were most intellectually disadvantaged (FSIQs of 63 and 68 respectively).

The findings of Gudjonsson's (1990a, 1991a) study suggested that the information in the original *NDP* was so complex that people with learning disabilities might have difficulty using it to safeguard themselves during police detention and interviewing.

3.2 STUDY 1: KNOWLEDGE AND UNDERSTANDING OF THE ORIGINAL VERSION OF THE *NOTICE TO DETAINED PERSONS*

3.2.1 INTRODUCTION

Though some of the participants in Gudjonsson's (1990a, 1991a) investigation were intellectually disadvantaged, none of them was a person with a mild learning disability, as defined in Ch. 2.4.1 of this thesis. Whilst there was some clinical case material (Gudjonsson, 1992a), no empirical data were available relating to knowledge and understanding of the caution ('if you are asked questions about a suspected offence you do not have to say anything unless you wish to do so, but what you do say may be given in evidence') and legal rights among this group of persons.

Drawing on theoretical analyses (Appelbaum and Grisso, 1988, 1995; Coles et al., 1996; Grisso and Appelbaum, 1998; Law Commission, 1995), in order to understand

information relevant to a particular decision, an individual must have that information available. Knowledge, assessed through the person's ability to remember what he or she has been told, or recall, therefore forms an essential part of understanding. In the present context, people will not be able to exercise their rights if they cannot recall them. The first aim of this study (which was initially reported as Clare and Gudjonsson, 1991) was to compare the effectiveness of access to the material on the second page of the original *NDP* in terms of improving knowledge among people with mild learning disabilities and their counterparts in the general population. However, since recall does not require any sense of the meaning of the material, it may over-estimate understanding. The second aim was to compare understanding of the information.

Given other studies (Cooke and Philip, 1998; Fulero and Everington, 1995; Grisso, 1981; Gudjonsson, 1990a, 1991a; Olley and Ogloff, 1993), it was expected that:

(i) compared with their 'general population' counterparts, people with mild learning disabilities would benefit less from access to the information; and

(ii) on both knowledge and understanding, the performance of the participants with mild learning disabilities would be worse than that of their 'general population' counterparts.

3.2.2 METHOD

Materials

The original version of the *NDP* is shown as Appendix 3a. The wording is repeated in the key to Figure 3.2.1.

Participants

There were two groups of volunteer participants, all of white British origin, drawn as convenience samples:

Learning disabilities: the LD group comprised 15 men and 5 women, all of whom fulfilled the criteria for inclusion (see Methodological Considerations, Ch.2.4.1).

General population: the GP group comprised 11 men and 9 women. All were in paid employment, mostly as hospital staff. All had prorated Full Scale IQ scores ≥ 80 and none was receiving support from learning disabilities services.

Though they were not asked directly, as far as was known, none of the participants had been arrested by the police since the introduction of *PACE* or had had any previous exposure to the *NDP*.

Measures

1. *Intellectual functioning*: to minimise the duration of testing, Full Scale IQ was prorated from the eight sub-tests of the Wechsler Adult Intelligence Scale-Revised (WAIS-R, Wechsler, 1981) with the highest correlations with Verbal IQ (Information, Vocabulary, Comprehension, Similarities) and Performance IQ (Picture Completion, Picture Arrangement, Block Design, Object Assembly), respectively.
2. *Reading ability*: since people are reluctant to admit to literacy problems (Charnley and Jones, 1979), reading ability was assessed using the Neale Analysis of Reading Ability (Neale, 1978). Given the complexity of the material, a criterion raw Reading Accuracy score of 95/100 (i.e. a reading accuracy age of 12 years 5 months) was set. This criterion is well above the 9 year level considered adequate for functional literacy in the UK (Dalglish, 1982). If participants did not achieve this level, the material in the *NDP* which suspects would normally read for themselves (the second page) was read to them.
3. *Knowledge of the caution and legal rights*: knowledge of the *NDP* was assessed through recall or paraphrasing of the thirteen items of information contained in the headings and explanatory paragraphs of the second page. These items are listed in the key to Figure 3.2.1. One point was given for each item which was recalled or paraphrased correctly.

   The effectiveness of the *NDP* was assessed by comparing knowledge before (Initial Knowledge) and after (Knowledge After) access to the information.
4. *Understanding of the caution and legal rights*: a questionnaire, involving 'yes'/'no' questions was devised, to be read to the participants after recall. Initially, the questionnaire comprised 20 items, balanced to control for acquiescence (Heal and Sigelman, 1995; Sigelman, Budd, Spanhel, and Schoenrock, 1981a; Sigelman, Budd, Spanhel, and Schoenrock, 1981b; Sigelman, Schoenrock, Spanhel, Hromas, Winer, Budd, and Martin, 1980). Informal piloting

with people with mild learning disabilities indicated that the questionnaire was too long and some of the questions were poorly worded.

The final questionnaire comprised only eight questions, drawn from the responses of the most disadvantaged participants in Gudjonsson's (1990a, 1991a) study and the informal piloting. The questions related to the main aspects of the key issues: understanding the caution, and the rights of the detained person to have someone informed of his/her arrest and to consult a solicitor. Only three could be devised which were correctly answered by 'no' so it was made clear to participants that a 'don't know' response was acceptable. The questions, with the correct responses in brackets are given below (under Figure 3.2.2). One point was given for each question answered correctly.

Procedure

Each participant was assessed individually, in a quiet room at his or her place of work or day-service. First, the test of reading ability was administered. Next, the participants were invited to report whatever they knew of the caution (explained as 'what the police say to you if you are arrested') and the rights in police detention ('what you are able to do if you are arrested and the police make you stay at the police station'). The caution and the information which the Custody Officer would normally present orally (the first page of the *NDP*) was then read aloud to each person. Then, participants who fulfilled the criterion for reading accuracy were allowed to take as much time as they wished to study the material intended for suspects to read for themselves (the second page of the *NDP*). Otherwise, this second page was read aloud to them.

The assessment of intellectual ability was then begun. Approximately 30 minutes after the presentation of the *NDP*, the participants were asked to recall whatever they could of the caution and rights. Then the questions relating to understanding were read and the responses recorded. Finally, the assessment of intellectual ability was completed.

3.2.3 RESULTS

Participant characteristics

Table 3.2.1 shows the mean scores, standard deviations and ranges for chronological age, Full Scale IQ and Reading Accuracy raw scores. The mean scores were compared statistically using the *t*-test (see Appendix 7 for details).

Whilst the mean chronological ages of the two groups did not differ significantly, the mean prorated Full Scale IQ and Reading Accuracy of the 'learning disabilities' group were, as expected, both significantly lower than those of the 'general population' group.

Table 3.2.1 Characteristics of the 'Learning disabilities' and 'General population' groups

	Learning disabilities			General population			*t*-value
	Mean	s. d.	range	Mean	s. d.	range	
Chronological age	30.3	9.4	18-50	27.5	7.3	20-48	1.1 n.s.
Full Scale IQ	65.0	5.3	57-75	99.8	7.2	83-111	16.8*
Reading accuracy raw scores	38.2	31.4	0-98	98.6	1.5	95-100	8.6*
No. of participants	20			20			

n.s. not significant (*t*-test for independent samples with equal variance, 2-tailed, df = 38)

* significant at $p<0.001$ (*t*-test for independent samples with equal variance, 1-tailed, df = 38)

Two analyses were then carried out.

Effect on knowledge of access to the *NDP*

Table 3.2.2 shows the number of participants in each group who recalled each item of information after access to the *NDP*. Performance was compared using the Chi-square test (see Appendix 7 for details). All but six items were recalled by significantly fewer of the LD group.

Figure 3.2.1 shows the percentage of participants in the two groups who correctly recalled, or paraphrased, each item of information before, and following, access to the *NDP*. Clearly, the LD group has less baseline knowledge of the information. As expected, though, access to the *NDP* was less effective for this group than their GP counterparts. For each item, Initial Knowledge and Knowledge After access were compared using Binomial tests (see Appendix 7 for details). For the participants with learning disabilities, there were significant improvements on only two items (C and G), compared with six items (C, E, F, G, J, L) for the 'general population' participants. Nevertheless, on more than half the items (54%), access to the *NDP* did not improve knowledge among even the general population group.

Understanding of the information in the *NDP*

Figure 3.2.2 shows the percentage of participants in each group who responded correctly to the each of the questions. All but one question (question 6) was answered correctly by fewer of the LD participants than their GP counterparts.

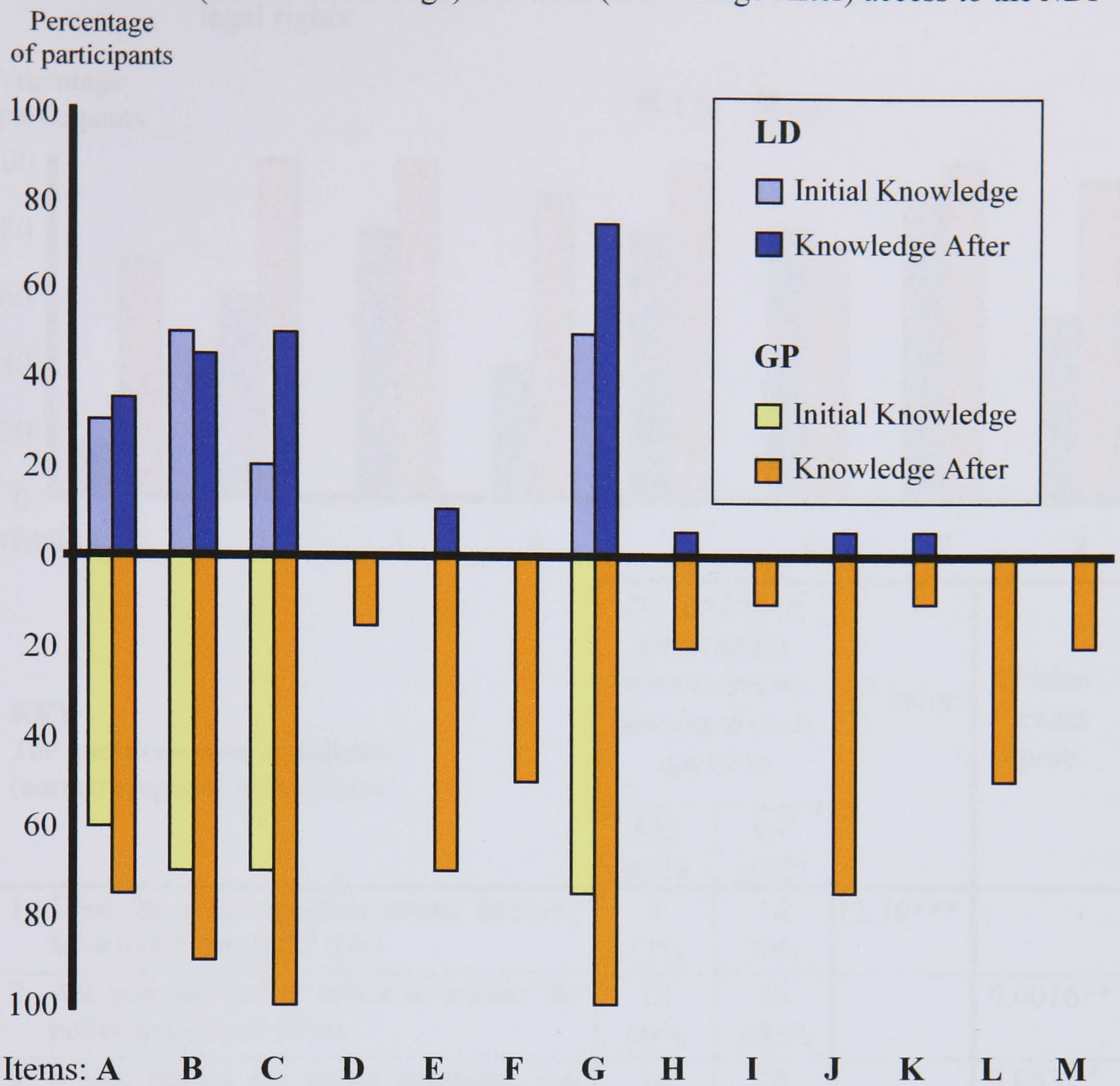
The lower part of Figure 3.2.2 shows the number of participants in each group who responded correctly to each question. Responses to each question were compared using the Chi-square test (see Appendix 7 for details). Four questions (1, 2, 4, 8) were answered correctly by significantly more of the general population participants. With two exceptions (questions 1 and 6), the responses of the 'general population' group were at, or near, 'ceiling'.

Table 3.2.2 Knowledge of the caution and legal rights after access to the *NDP*

	No. of participants who recalled each item		χ^2 value	Fisher exact prob.
	LD N=20	GP n=20		
A: If you are asked questions about a suspected offence you do not have to say anything.	7 35%	15 75%	6.46*	
B: What you say may be given in evidence.	9 45%	18 90%	9.23**	
C: You have the right to have someone informed of your detention.	10 50%	20 100%	13.34***	
D: You may on request have one person known to you, or who is likely to take an interest in your welfare, informed at public expense as soon as practicable of your whereabouts.	0 0%	3 15%		0.12 n.s.
E: If the person you nominate cannot be contacted you may choose up to two alternatives.	2 10%	14 70%	15.00***	
F: If they (the two alternatives) too cannot be contacted the Custody Officer has discretion to allow further attempts until the information has been conveyed.	0 0%	10 50%	13.34***	
G: (You have) the right to legal advice.	15 75%	20 100%		0.024*
H: You may at any time consult and communicate privately, either in person, in writing or on the telephone, with a solicitor.	1 5%	4 20%		0.17 n.s.
I: Under certain circumstances both of the above rights may be suspended for a limited period in accordance with the Codes of Practice.	0 0%	2 10%		0.24 n.s.
J: A copy of the Codes of Practice governing police procedures will be made available to you on request.	1 5%	15 75%	20.45***	
K: You do not have to exercise any of the above three rights (i.e. C, G and J) immediately.	1 5%	2 10%		0.50 n.s.
L: A record of your detention will be kept by the Custody Officer. When you leave police detention or are taken before a Court, you or your legal representative shall be supplied on request with a copy of the Custody Record as soon as practicable.	0 0%	10 50%	13.34***	
M: This entitlement (to the Custody Record) lasts for 12 months after your release from prison.	0 0%	4 20%		0.053 n.s.

n.s. not significant; * $p<0.05$; ** $p<0.01$; ***$p<0.001$ (df = 1)

Figure 3.2.1: Knowledge of the caution and the rights among each group before (Initial Knowledge) and after (Knowledge After) access to the *NDP*



KEY

Except for the parts in brackets, the wording is that of the information on the second page of the Notice to Detained Persons

A: If you are asked questions about a suspected offence you do not have to say anything.

B: What you say may be given in evidence.

C: You have the right to have someone informed of your detention.

D: You may on request have one person known to you, or who is likely to take an interest in your welfare, informed at public expense as soon as practicable of your whereabouts.

E: If the person you nominate cannot be contacted you may choose up to two alternatives.

F: If they (the two alternatives) too cannot be contacted the Custody Officer has discretion to allow further attempts until the information has been conveyed.

G: (You have) the right to legal advice.

H: You may at any time consult and communicate privately, either in person, in writing or on the telephone, with a solicitor.

I: Under certain circumstances both of the above rights may be suspended for a limited period in accordance with the Codes of Practice.

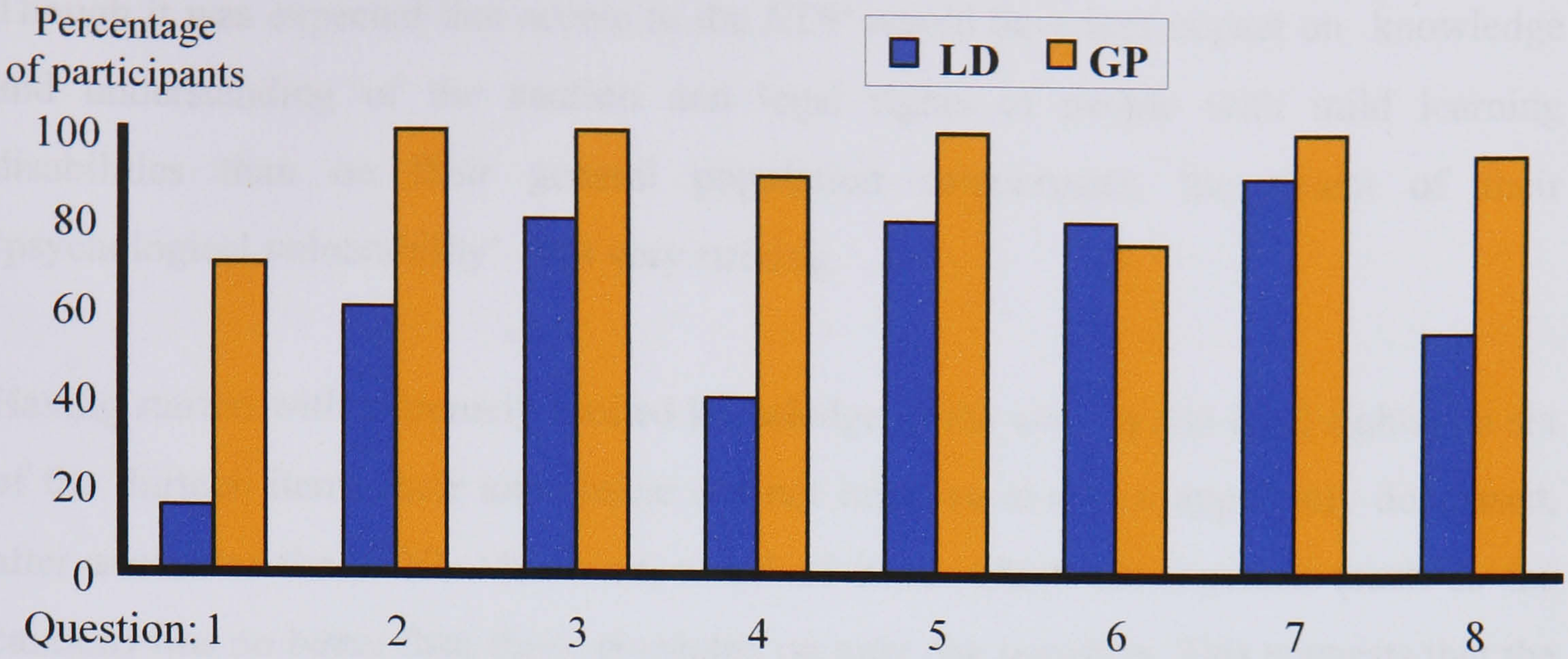
J: A copy of the Codes of Practice governing police procedures will be made available to you on request.

K: You do not have to exercise any of the above three rights (i.e. C, G and J) immediately.

L: A record of your detention will be kept by the Custody Officer. When you leave police detention or are taken before a Court, you or your legal representative shall be supplied on request with a copy of the Custody Record as soon as practicable.

M: This entitlement (to the Custody Record) lasts for 12 months after your release from police detention.

Figure 3.2.2 Responses by each group to the questions about the caution and legal rights



KEY
The questions were as follows (correct response in brackets):

	No. and % of participants who correctly answered each question		χ^2 value	Fisher exact prob.
	LD n=20	GP n=20		
1. Does the police caution meant that you have to tell the truth? (No)	3 15%	14 70%	12.38***	
2. Are you allowed to refuse to answer the police questions? (Yes)	12 60%	20 100%		0.0016**
3. If you answer the police questions, can your answers be used against you in court? (Yes)	16 80%	20 100%		0.053 n.s.
4. Do the police generally tell your family/people who care about you where you are without you asking them to? (No)	8 40%	18 90%	10.99***	
5. If you do not have any money to pay for the 'phone call, will the police still 'phone someone to let them know where you are? (Yes)	16 80%	20 100%		0.053 n.s.
6. Do you need a solicitor if you are innocent of the crime about which you are being questioned? (Yes)	16 80%	15 75%		0.50 n.s.
7. If you do not know the name of a solicitor, but you ask for someone, will the police find a solicitor for you? (Yes)	18 90%	20 100%		0.24 n.s.
8. If a solicitor comes to the police station to speak to you, will s/he tell the police everything that you have said to him/her? (Yes)	11 55%	19 95%	8.53**	

n.s. not significant; * $p<0.05$; ** $p<0.01$; ***$p<0.001$ (df = 1)

3.2.4 DISCUSSION

Though it was expected that access to the *NDP* would have less impact on knowledge and understanding of the caution and legal rights of people with mild learning disabilities than on their general population counterparts, the extent of their 'psychological vulnerability' was very striking.

Having started with extremely limited knowledge of the caution and legal rights, on six of the thirteen items their knowledge did not improve at all, or apparently decreased, after access to the *NDP*. Moreover, recall of items which are repeated (such as the caution) was no better than those presented on only one occasion. This suggests that the material was so complex for people with learning disabilities that simple repetition, even under relaxed conditions, was inadequate; it may even have been confusing. The only two items on which there were significant improvements (the right to inform someone of detention and the right to legal advice, see Fig. 3.2.1) were those which were recalled by all the 'general population' participants, supporting Gudjonsson's (1990a, 1991a) suggestion that some parts of the leaflet were easier than others. Nevertheless, one in five of the participants with learning disabilities did not know even the bare fact of the right to legal advice.

The findings of the questionnaire to elicit understanding of the information in the *NDP* need to be treated cautiously. The proportion of participants with mild learning disabilities who answered correctly with a negative response was generally low. This cast doubt on the group's apparent understanding of the other questions (for example, question 6, see Figure 3.2.2). Their responding on these questions may have reflected their susceptibility to acquiescence (Heal and Sigelman, 1995; Sigelman et al., 1980; Sigelman et al., 1981a, b). The responses of the 'general population' participants place further doubts on the questionnaire. Theoretically (Appelbaum and Grisso, 1988; Coles et al., 1996; Grisso and Appelbaum, 1998; Keeley, 1995), it is more cognitively demanding to understand the meaning of material than simply to recall it. Yet, despite the limited recall of the information, all but two of the questions were answered correctly by all, or almost all, the group. It is most likely that the content of the questionnaire, much of which corresponded closely with the content of the *NDP*,

required only recognition, an easier task than reproducing information (Lezak, 1995). These problems suggested that the questionnaire needed further development.

Nevertheless, the results supported Gudjonsson's (1990a, 1991a) study and are consistent with both Grisso's (1981) initial study and subsequent investigations of the safeguards in other jurisdictions (Cooke and Philip, 1998; Fulero and Everington, 1995; Olley and Ogloff, 1993). Knowledge of the information among the participants with learning disabilities was very poor, even when the impact of their reading difficulties was avoided. However, their difficulties need to be seen in the context of the rather limited impact of the *NDP* on the 'general population' group. Few of them recalled all the details which suspects would need to understand in order to exercise their rights fully (for example, only 10 per cent of the group stated that the first three rights do not have to be exercised immediately (Item I on Fig. 3.2.1)).

These findings suggested that the information presented in the *NDP*, like the *Miranda* rights in the U.S.A. (Grisso, 1981), may be too complex for its intended purpose. In fact, based on Gudjonsson's (1990a, 1991a) study, and before Study 1 was even completed, the Home Office announced (Dyer, 1990) that the *NDP* would be reviewed as part of the revision of the Codes of Practice (Home Office, 1991).

3.3 STUDY 2: UNDERSTANDING OF THE REVISED *NOTICE TO DETAINED PERSONS*

3.3.1 INTRODUCTION

The revised version of the *Notice to Detained Persons* was introduced in April, 1991. Minor changes were made to the first page, which the Custody Officer would read out: the most important of these was that the caution, which was unchanged, was now written out in full. More extensive amendments were made to the second page, which the suspect would read for him or herself. The page still contained four sections, outlining each of the rights, but was expanded from ten to twenty-four sentences. The sections were labelled in the same way, with one exception: 'The right to legal advice' was changed to 'Free Legal Advice', and expanded (from two to fourteen sentences) to

reflect the amended content which emphasised that legal advice at the police station was free of charge. Minor amendments were made to the other three rights so that they provided further information.

Since it was intended that the revised *NDP* would be easier to understand than the original, Gudjonsson repeated his analysis of the complexity of the second page, using the Flesch Formula (Flesch, 1948). Though some sections had been simplified considerably (for example, the right to legal advice) others, in particular the right to consult a copy of the Codes of Practice, were actually more difficult (Gudjonsson, Clare and Cross, 1992). Overall, the revised version was less complex, but only marginally: the 'Reading Ease' had been improved from 50 to 56. According to Flesch's (1948) description, it remained 'fairly difficult'. These findings suggested that the information was still very complex, particularly for people with mild learning disabilities.

The second part of the same study (which was initially reported as Gudjonsson, Clare and Cross, 1992) was an exploratory investigation to compare understanding of the information in both sections of the *NDP* among people with mild learning disabilities and their peers in the general population. It was expected that the performance of the 'mild learning disabilities' group would be worse than that of their 'general population' counterparts.

3.3.2 METHOD

Materials

The revised *NDP* is shown as Appendix 3b. The wording is repeated in Table 3.3.3.

Participants

There were two groups of volunteer participants, all of white British origin, drawn as convenience samples:

Learning disabilities: the LD group comprised 8 men and 5 women, all fulfilling the criteria for inclusion (see Methodological Considerations, Ch.2.4). Their Full Scale IQ scores were prorated from eight sub-tests of the WAIS-R (Wechsler, 1981), as described for Study 1.

General population: 12 men and 5 women formed the GP group. They comprised teachers, hospital staff, and people without paid employment. All had prorated Full Scale IQ scores ≥ 80 and none was receiving support from learning disabilities services. All participants were asked whether they had seen the revised *Notice to Detained Persons*; none stated that he or she had done so.

The chronological ages and Full Scale IQ scores of the two groups are shown in Table 3.3.1. The mean scores were compared statistically by calculating *t* values, which are given in the last column. There was a significant difference between the Full Scale IQ scores, but not the chronological ages, of the two groups.

Table 3.3.1 Characteristics of the 'Learning disabilities' and 'General population' groups

	Learning disabilities			General population			*t*-value
	mean	s.d.	range	mean	s.d.	range	
Chronological age	32.7	9.8	23-50	31.1	10.1	22-58	0.413 n.s.
FSIQ	64.7	4.1	57-73	98.6	11.2	88-128	10.04 *
No. of participants	13			17			

n.s. not significant (*t*-test for independent samples with equal variance, 2-tailed, df = 28)

* significant at $p<0.001$ (*t*-test for independent samples with equal variance, 1-tailed, df = 28)

Measures

Two measures of understanding were used:

1. *Paraphrased recall of the caution and legal rights as discrete elements*: the entire revised *NDP* was read aloud to the participants, who were also able to study their own copy. This enabled those taking part to become familiar with the material. They were then asked to explain the meaning of each sentence in turn as it was read out to them. This method avoids the confounding effects of reading difficulties to which, Study 1 suggested, participants are reluctant to admit. It also avoids the problems in verbal memory (Gudjonsson, 1988a; Martin, West, Cull

and Adams, 2000) experienced by people who are intellectually disadvantaged. As it was, all participants had the maximum possible exposure to the information.

2. *Questionnaire*: an eight-item 'yes'/'no' questionnaire was devised. Given the problems described in the previous study, the items were changed. Though still focussed primarily on the caution and the right to legal advice, an attempt was made to (i) simplify the structure of the questions; (ii) improve the accuracy of the questions (for example, the police can tell the Court anything which is said to them by a suspect, not simply, as in the version in Study 1, the answer to questions); (iii) remove complex legal terminology, such as 'innocent' and 'caution'; (iv) delete other words which appeared too difficult (such as 'refuse'); and (v) limit the number of items correctly answered by 'yes' in order to address the apparent tendency to acquiescence of people who are intellectually disadvantaged (Heal and Sigelman, 1995; Sigelman et al., 1980; Sigelman et al., 1981a, b). The questionnaire is shown in the bottom part of Figure 3.3.1.

Procedure

Participants were seen individually in a quiet room at their place of work, home or day-service. Most of the participants in the 'general population' group were assessed by Ms. Philippa Cross, who was funded as a Research Assistant by the Royal Commission on Criminal Justice, and whom I trained in the use of the tests. I assessed the remaining participants in this group, and all those in the LD group.

The assessment of intellectual ability was carried out first. Then, the paraphrased recall task of understanding was carried out. All the participants attempted to carry out the task and the responses were written down verbatim. Finally, the questionnaire was presented orally.

Scoring

Typed transcripts of the responses were prepared. A three-point scoring system was devised, based on the Vocabulary sub-test of the WAIS-R (Wechsler, 1981) and the *Comprehension of Miranda Rights* (Grisso, 1981). Two points were given for a response demonstrating understanding of all the ideas in a particular sentence; one point was given where understanding was partial; no point was given where there was no evidence of understanding. The responses were scored independently, by me (Rater A),

and by Professor Gudjonsson (Rater B) who had not been involved in the testing. Examples of the scoring are given in Table 3.3.2 below.

Since partial explanation of a sentence (i.e. a 1-point response) did not seem to indicate understanding of the meaning of a particular sentence, the 0 and 1 point scores were combined into a single category ('no understanding'). For the calculation of inter-rater reliability, therefore, unweighted Kappa coefficients (Bartko and Carpenter, 1976) were used. This stringent, chance-corrected, measure provided an average Kappa coefficient of 0.862 (s.d. 0.08; range: 0.72-1.00). Arguably (Streiner and Norman, 1995), a Kappa coefficient of this magnitude is 'almost perfect' (Landis and Koch, 1977). Given the very high level of inter-rater agreement, participants were treated as having understood a sentence if *either* rater gave a 2-point score.

Table 3.3.2 Examples of the scoring by Rater A and Rater B of participants' paraphrased recall (possible scores: 0, 1 or 2 points, depending on the adequacy of the explanation)

Sentence	Participant's response	Rater A score	Rater B score
1.	Evidence, yeah. It means you must not give evidence unless you are spoken to by the police.	0	0
6.	You're allowed to speak to a solicitor 24 hours a day.	2	2
15.	They might have to question you without a solicitor.	1	1
21.	For example, if you, say, name a person and they're not there, you can tell them to ask person b or c.	2	2
26.	If you do give samples, they have them back as quickly as possible.	0	0
27.	When you're brought into the station, all records on you will be kept.	1	1
29.	The Custody Record only lasts 12 months after your release.	0	1

3.3.3 RESULTS

Two analyses were carried out.

Paraphrased recall

Table 3.3.3 shows the percentage of participants in each group who were judged, by one or both raters, to have demonstrated understanding of each sentence by paraphrasing or explaining its meaning correctly.

As expected, understanding of the revised *NDP* was much poorer among the participants with learning disabilities than their general population counterparts. Performance was compared using the Chi-square test or the Fisher Exact test, as appropriate (see Appendix 7 for details). On 21 of the 29 sentences (72%), understanding was demonstrated by significantly fewer of the LD group than their GP counterparts. There was very considerable variation in understanding of different sentences. However, again, the GP group also found much of the information hard to paraphrase. Indeed, not one single sentence was explained correctly by all the group.

Questionnaire

Figure 3.3.1 shows the number and percentage of participants in each group who responded correctly to each question.

Performance was compared using the Chi-square test (see Appendix 7 for details). Three questions (3, 4, 7) were answered correctly by significantly more of the 'general population' participants. Nevertheless, there were only four items to which all the GP group responded correctly.

Table 3.3.3 The number and percentage of LD and GP participants who understood each sentence fully (i.e. were allocated a 2 point response by Rater A *or* Rater B)

		LD n=13	GP n=17	χ^2 value	Fisher exact prob.
1.	If you are asked questions about a suspected offence, you do not have to say anything unless you wish to do so, but what you say may be given in evidence.	1 8%	12 71%	11.87***	
2.	You have the right to speak to an independent solicitor free of charge.	1 8%	9 53%		0.011*
3.	You have the right to have someone told that you have been arrested.	2 15%	11 65%	7.30**	
4.	You have the right to consult the Codes of Practice covering police powers and procedures.	0 0%	9 53%		0.0017**
5.	You may do any of these things now, but if you do not, you may do so at any time whilst detained at the police station.	1 8%	10 59%		0.0049**
6.	You can speak to a solicitor at the police station at any time, day or night.	3 23%	9 53%	2.74 n.s.	
7.	It will cost you nothing.	7 54%	14 82%		0.099 n.s.
8.	Access to legal advice can only be delayed in certain exceptional circumstances.	0 0%	8 47%		0.0042**
9.	If you do not know a solicitor, or cannot contact you own solicitor, ask for the duty solicitor.	3 23%	11 65%	5.13 n.s.	
10.	He or she has nothing to do with the police.	3 23%	15 88%	13.03**	
11.	Or you can ask to see a list of local solicitors.	3 23%	12 71%	6.65**	
12.	You can talk to the solicitor in private on the telephone and the solicitor may come to see you at the police station.	1 8%	11 65%	9.98**	
13.	If the police want to question you, you can ask for the solicitor to be there.	2 15%	12 71%	9.02**	

continued ...

Table 3.3.3 continued

14.	If there is a delay, ask the police to contact the solicitor again.	2 15%	9 53%		0.040 n.s.
15.	Normally, the police must not question you until you have spoken to the solicitor.	2 15%	7 41%		0.13 n.s.
16.	However, there are certain exceptional circumstances in which the police may question. you without a solicitor being present.	0 0%	7 41%		0.0096**
17.	If you want to see a solicitor, tell the Custody Officer at once.	5 38%	13 76%	4.43 n.s.	
18.	You can ask for legal advice at any time during your detention.	2 15%	10 59%	5.79*	
19.	Even if you tell the police you do not want a solicitor at first, you can change your mind at any time.	5 38%	13 76%	4.43*	
20.	You may on request have one person known to you, or who is likely to take an interest in your welfare, informed at public expense as soon as practicable of your whereabouts.	1 8%	5 29%		0.16 n.s.
21.	If the person you name cannot be contacted you may choose up to two alternatives.	0 0%	12 71%	15.29***	
22.	If they too cannot be contacted the Custody Officer has discretion to allow further attempts until the information has been conveyed.	0 0%	8 47%		0.0042**
23.	This right can only be delayed in exceptional circumstances.	0 0%	9 53%		0.0017**
24.	The Codes of Practice will be made available to you on request.	0 0%	14 82%	20.14***	
25.	These Codes govern police procedures.	0 0%	14 82%	20.14***	
26.	The right to consult the Codes of Practice does not entitle you to delay unreasonably any necessary investigative and administrative action, neither does it allow procedures under the Road Traffic Act 1988 requiring the provision of blood or urine specimens to be delayed.	0 0%	9 53%		0.0017**
27.	A record of your detention will be kept by the Custody Officer.	2 15%	9 53%		0.040*

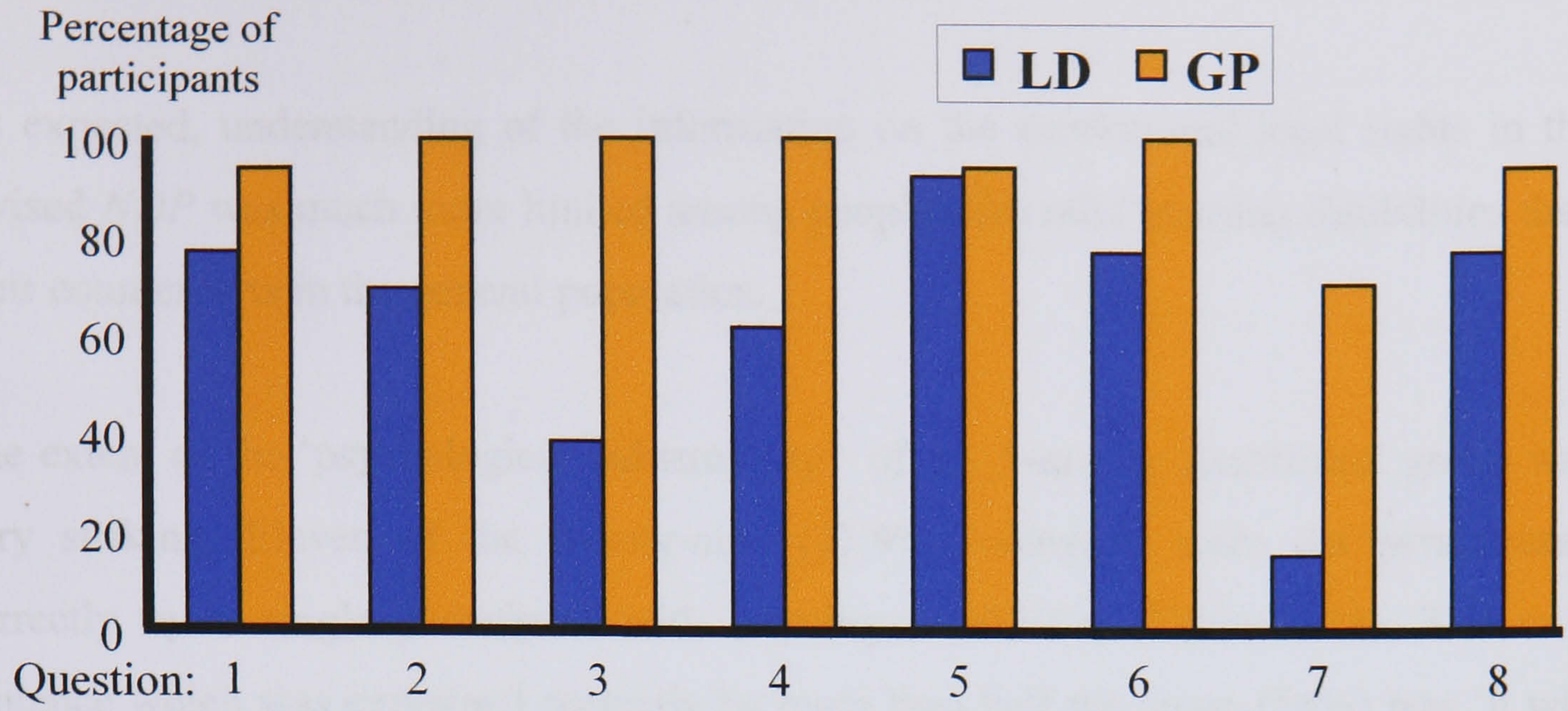
continued …

Table 3.3.3 continued

28.	When you leave police detention or are taken before a Court, you or your legal representative or the appropriate adult shall be supplied on request with a copy of the Custody Record as soon as practicable.	0 0%	6 35%		0.021*
29.	This entitlement lasts for 12 months after your release from police detention.	0 0%	11 65%		0.0002***

n.s. not significant; * $p<0.05$; ** $p<0.01$; ***$p<0.001$ (df = 1)

Figure 3.3.1 Correct responses by each group to the questions about the caution and legal rights



KEY
The questions were as follows (correct response in brackets):

	No. and % of participants who correctly answered each question		χ^2 value	Fisher exact prob.
	LD n=13	GP n=17		
1. Do you have to answer the police questions even if you don't really want to? (No)	10 77%	16 94%		0.20 n.s.
2. If you say anything to the police and your case goes to Court, can the police tell the Court what you've said to them? (Yes)	9 69%	17 100%		0.026*
3. Is it true that you only need a solicitor if you've done the crime you're being questioned about (i.e. you're guilty)? (No)	5 38%	17 100%		0.0002***
4. Do you need money in order to have a solicitor to help you at the police station? (No)	8 62%	17 100%		0.009**
5. If you ask the police to tell your family or someone who cares about you that you're at the police station, will they normally contact them? (Yes)	12 92%	16 94%		0.69 n.s.
6. Do you have to give the police money before they'll contact someone who cares about you? (No)	10 77%	17 100%		0.070 n.s.
7. If you say anything to the police, do you have to tell them the truth? (No)	2 15%	12 71%	9.02**	
8. If you don't want a solicitor to help you or someone told that you're at the police station straightaway, are you allowed to change your mind later? (Yes)	10 77%	16 94%		0.20 n.s.

n.s. not significant; * $p<0.05$; ** $p<0.01$; ***$p<0.001$ (df = 1)

3.3.4 DISCUSSION

As expected, understanding of the information on the caution and legal rights in the revised *NDP* was much more limited among people with mild learning disabilities than their counterparts in the general population.

The extent of the 'psychological vulnerability' of the 'learning disabilities' group was very striking. Eleven of the twenty-nine (37.9%) sentences were not paraphrased correctly by a single participant with learning disabilities (Table 3.3.3). The only sentence which was explained correctly by more than half the group (54%) was 'it will cost you nothing' (sentence 7, Table 3.3.3). Only 8 per cent of the participants provided an accurate explanation of the information about the caution which Custody Officers would normally present orally (sentence 1). Similarly, only 8 per cent paraphrased correctly the right to legal advice (sentence 2).

Though paraphrased recall is verbally demanding, the poor performance of the participants with learning disabilities did not seem simply to reflect the methodology. With a single exception (question 5, see Fig. 3.3.1), which was worded so that it was answered correctly by a 'yes', meaning that acquiescent responding could not be excluded, the questionnaire responses were consistent with the paraphrased recall. They suggested that even factual items were not well understood (for example, fewer than two-thirds (62%) of the 'learning disabilities' participants provided a correct answer to question 4 (about whether legal advice is free)). The most difficult question was question 7, about whether to tell the police the truth; fewer than one in six (15%) of the participants with learning disabilities responded correctly to this item. A similar question, differently worded, was asked in Study 1 (see question 1, Fig. 3.2.2), and was also answered correctly by a low proportion of the group. This suggests that, even when people with learning disabilities understand the meaning of information, they may be naïve about its significance; this issue is returned to in Ch. 4.

Again, however, the poor performance of the 'learning disabilities' group has to be seen in the context of the limited understanding of their peers in the general population. Though this group included two people whose intellectual ability lay in the Superior

range (with Full Scale IQ scores of 125 and 128, respectively, and both university graduates), *no one* paraphrased all 29 sentences correctly. Fewer than three-quarters (71%) of the group explained the meaning of the caution satisfactorily; similarly, only just over half (53%) demonstrated understanding of the right to a solicitor. Whilst most of these participants responded correctly to the 'factual' questions about their rights, like their counterparts with learning disabilities they experienced difficulty in responding to the question requiring some awareness of the functions of the safeguards; fewer than 71% answered this item correctly (similar to the 70% correct response to an almost identical question in Study 1 (Ch. 3.2)).

These findings were consistent with Gudjonsson's (Gudjonsson et al., 1992) analysis using the Flesch Formula (Flesch, 1948) suggesting that, overall, the second page of the revised *NDP* was only marginally easier than the original version. Indeed, some of the sentences in the revised version appeared very difficult to explain (for example, sentences 16 and 26, Table 3.3.3), particularly for people with learning disabilities.

Though this study involved only a small number of participants, it supported Gudjonsson's (1992a, 1993, 1994, 1999) suggestion that people with learning disabilities may be 'psychologically vulnerable' because of their limited understanding of the information presented orally by Custody Officers and presented in writing in the *NDP*. The only change made to this *NDP* has been an amendment to reflect the introduction of the current caution (Home Office, 1995a).

3.4 STUDY 3: UNDERSTANDING OF THE CAUTION IN THE CURRENT *NOTICE TO DETAINED PERSONS*

3.4.1 INTRODUCTION

The final study relates to the current caution which was introduced following the modification of the right to silence under the *Criminal Justice & Public Order Act 1994*.

A model for a caution which would reflect the modification was already provided by Northern Ireland, where the right to silence had been modified in 1988. The version used in that jurisdiction reads:

'(y)ou do not have to say anything unless you wish to do so but I must warn you that if you fail to mention any fact which you rely on in your defence in court, your failure to take this opportunity to mention it may be treated in court as supporting any relevant evidence against you. If you do wish to say anything, what you say may be given in evidence' (Justice, 1994, p.13).

Research commissioned by Justice (1994) into solicitors' (N=12) perceptions of suspects' understanding of this caution led to the following conclusion:

'(i)t was the unanimous view of the solicitors interviewed that suspects do not understand the caution under the Order when it is read out to them by the police and that only a small minority, estimated at around 5%, actually appreciate its significance. This is despite the fact that clients will usually claim that they have understood it when asked' (ibid., p.14).

Despite this discouraging conclusion, the draft version of the new caution for England and Wales, prepared by the Home Office in 1994, was worded in a similar way to the one already in use in Northern Ireland. The draft comprised 60 words and read as follows:

'(y)ou do not have to say anything. But if you do not mention now something which you later use in your defence, the court may decide that your failure to mention it now strengthens the case against you. A record will be made of anything you say and it may be given in evidence if you are brought to trial' (Bennetto, 1994).

As part of a larger study, Gudjonsson and Clare (1994) compared understanding of this draft among a small group of men and women (n=18) with mild learning disabilities who fulfilled the criteria for inclusion in this thesis (mean Full Scale IQ on the WAIS-R: 68; s.d.: 5.46; range: 61-75) with that of sixth form students (n=45, aged 17-18 years), preparing for two or more 'A' levels and thought to be of at least average intellectual ability. As expected from the poor understanding of the caution in Study 2 (see Ch. 3.3), the draft was extremely difficult for the participants with learning disabilities. Using paraphrased recall as a measure of understanding, none of this group explained the caution correctly when it was presented in its entirety, as it would be in real life. Even when the task was simplified by asking participants to explain each sentence as it was read out in turn, only 2 (11%) individuals with learning disabilities correctly paraphrased all three sentences. However, the 'A' level students also found the information problematic. Fewer than one in ten (7%) explained the caution in its entirety and only about half the group

(58%) demonstrated understanding of all three sentences presented separately. The second and third sentences appeared particularly problematic.

This small study suggested that the draft caution was far too complex, even for people who were intellectually able. As was concluded in a comment on the research, the 'caution must surely win the gobbledegook award of 1994' (Leader, *The Guardian*, 7th December, 1994, p. 23). More importantly, as the Law Society and Bar Council submitted, the wording misrepresented the meaning of s. 35 of the *Criminal Justice & Public Order Act 1994*. A refusal to answer questions does not strengthen the prosecution case but merely weakens that of the defence (Wasik and Taylor, 1995). Following these concerns, the 60-word draft was withdrawn. Subsequently, the Home Office produced a new version, the current caution. This is given in the following words:

> (y)ou do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence (Home Office, 1995a, C.10.4).

Minor variations in the wording are permitted (Home Office, 1995a, C.10.4). In addition, if it appears that a suspect does not understand the caution, police officers are enjoined to explain it in their own words (ibid., Note 10C). Detailed guidance is available (National Crime Faculty, 1996, pp. 68-69) about the elements to be included in such an explanation.

A study of understanding among the general public (Shepherd, Mortimer and Mobasheri, 1995) suggested that the current caution is very complex. Though the report is confusing, it appears that, even when the presentation was simplified, less than half (a maximum of 40%, N = 109) the participants explained all three sentences correctly. Of particular concern, and consistent with the research for Justice (1994), many people believed, incorrectly, that they understood its meaning. However, the use of participants who were stopped on the street and may not have been concentrating on the task, together with the absence of clear criteria for scoring the responses, means that it is possible that the findings underestimated the level of understanding.

Unlike Studies 1 and 2 (see Ch. 3.2 and Ch. 3.3), this study (which was initially reported as Clare, Gudjonsson and Harari, 1998) did not involve people with mild learning disabilities. Developing the findings of Shepherd et al. (1995), the investigation

focussed on the adequacy of the caution as a possible safeguard for the 'ordinary' person. The aims were two-fold:

(i) investigate understanding of the current caution among three groups: 'A' level students, adults in the general population, and police officers. From previous studies, it was expected that understanding would be better among the students, who were intellectually advantaged, than their adult counterparts. Since police officers are obliged to explain the caution to suspects who seem not to understand the information, their understanding was also examined. Given their professional familiarity with the information, it was expected that the police officers would perform better than both the other groups;

(ii) to examine whether the current version is less complex than the draft. Since the current caution is briefer, and was prepared in response to concern about the draft, it was expected that it would be simpler.

3.4.2 METHOD

Participants

There were three groups, all of whom were either of British origin or spoke English fluently, recruited as convenience samples:

Students: this group comprised 72 young people (mean age: 16 years 6 months; range: 16-19 years), studying for two or more 'A' levels at the same college as the participants in Gudjonsson and Clare (1994), though they had not taken part in the previous study. It was expected that all the students were of at least average intellectual ability, and most expected to attend university. Though, in order not to be intrusive, they were not asked about any arrests or convictions, it was expected that they would have, at most, limited experience of the criminal justice system.

General population: the group comprised 15 men and women (mean age: 40 years 2 months; range: 21-59 years), recruited by advertising, and paid for their participation. The three sub-tests (Vocabulary, Comprehension and Picture Completion) of the WAIS-R (Wechsler, 1981), used by Gudjonsson et al. (1993), provided an *estimate* of overall intellectual ability. The mean Full Scale IQ of the group was within the Average range (94.9; s.d.: 12.5; range: 78-119). Since the group was already very small, two people with Full Scale IQ scores below 80 were included. None of the participants had attended

a 'special' school in childhood or was attending or had attended services for people with learning disabilities. Two people volunteered that they had been arrested since April, 1995, but in neither case had they apparently proceeded to court.

Police officers: the 21 men and women (mean age: 31 years 6 months; range: 21-50 years) in this group were attending courses at their county constabulary's training college. The mean length of service was 7 years 6 months (range: 1-20 years): six were probationer constables, one was the sergeant in charge of the group; the remainder were detectives. The caution had been introduced six months earlier and all the participants stated that it was familiar. However, it was not known whether any of them had received formal training in investigative interviewing (the P.E.A.C.E. course; National Crime Faculty, 1996) which should have provided detailed knowledge of its elements.

Measures and Procedure

Since the paraphrased recall methodology has already been described (see Ch. 3.3.2), the Measures and Procedure are combined here. Understanding of the current caution was assessed in two ways:

1. *Entirety*: the entire caution was read aloud slowly, and clearly, to the participants. The caution was presented to the students in their classes by Mr. Philippe Harari, their teacher, whom I had trained and had already been involved in the presentation of the draft version (Gudjonsson and Clare, 1994). I presented the caution to the police officers (who were seen in their classes) and to the 'general population' group (who were interviewed individually). Each person was asked to explain the meaning of the caution (in writing for the students and police officers; orally for the 'general population' group) in his/her own words.
2. *Sentence by sentence (discrete elements)*: each person was then given a written copy of the current caution. Each sentence was read out in turn and participants were asked to explain its meaning. Again, the 'student' and 'police officer' groups were asked to write down their explanations; those of 'general population' group were given orally and written down verbatim.

3.4.3 RESULTS

Rating of the responses

Based on the intended meaning of s. 34 of the *Criminal Justice & Public Order Act 1994* (Wasik and Taylor, 1995), which has not been amended by subsequent legislation (the *Youth Justice & Criminal Evidence Act 1999*), criteria for scoring each of the three elements were developed and discussed with Ms. Sheila James, solicitor, at the Metropolitan Police Service. Using the guidance for investigative interviewing (National Crime Faculty, 1996, pp. 68-69) to assist in the interpretation of the criteria, each sentence, or part of each sentence, containing an element of the caution was rated: as 'correct' if the sense of the element was explained accurately or implied strongly, or as 'incorrect'. Table 3.4.1 shows examples of my ratings and those made independently by the solicitor and Inspector Brian Roberts (Metropolitan Police Service).

Whilst the two members of the Metropolitan Police Service agreed completely with each other, in a very few cases they disagreed with me: invariably, they were less generous. The discrepancies were discussed until the interpretation of the criteria was agreed. I then rated the complete set of responses again. As a check, the independent raters reviewed a small sample; again, their interpretation of the criteria was stricter. Since it was important not to underestimate the participants' understanding of the caution, they agreed that a more liberal interpretation was acceptable. Where there was a disagreement of this sort, the most positive rating was invariably used for analyses.

Three analyses were carried out.

Understanding of the current caution when presented in its entirety

Figure 3.4.1 shows the proportion of participants in each group who correctly explained each sentence, and all three sentences, of the caution presented in its entirety.

Table 3.4.1 Examples of the rating of participants' explanations of the current caution were rated. For each element of the caution, a score of 1 ('correct') or 0 ('incorrect') was given

Participant's response	My rating	Solicitor and police officer's ratings
You don't have to say anything. Anything you say may be used for evidence in court. If you don't say something now but you do if your case goes to court, then the court may decide you should have said and your case may be affected by it.	Element 1: 1 Element 2: 1 Element 3: 1	Element 1: 1 Element 2: 1 Element 3: 1
Although you have the choice to say nothing, if you do so and then mention something in court, you could harm your defence.	Element 1: 1 Element 2: 1 Element 3: 0	Element 1: 1 Element 2: 0 Element 3: 0
Don't have to say anything. But there may be later implications in a court of law if you withhold information	Element 1: 1 Element 2: 0 Element 3: 0	Element 1: 1 Element 2: 0 Element 3: 0
If you do not wish to say anything you do not have to. If I have a recollection or story and I don't give it, it could be held against me. If I do say anything it's evidence either to my good or detriment	Element 1: 1 Element 2: 0 Element 3: 1	Element 1: 1 Element 2: 0 Element 3: 0
If you are aware of something and you fail to mention it, it may be held against you if you later appear before a court, but you still need not answer any questions.	Element 1: 1 Element 2: 0 Element 3: 0	Element 1: 1 Element 2: 0 Element 3: 0

As expected, understanding of the caution was most limited among the 'general population' participants, and least limited among the police officers. Statistical analysis using the Chi-square test (see Appendix 7 for details) showed that, overall, the 'A' level students' performance was not significantly different from that of adults in the 'general population'. The second sentence was the main source of difficulty for both groups. Compared with the police officers, very significantly fewer students or 'general population' participants explained this middle sentence correctly. Nevertheless, only two-thirds (67%) of the police provided an adequate explanation of the meaning of the second sentence. Overall, only about half (48%) the police officers provided correct explanations of all three sentences. Statistical analysis using the Fisher exact test indicated that complete explanations were provided by similar proportions of probationer constables and more experienced officers. This suggested that length of service, of itself, was not helpful in understanding the caution.

Understanding of the current caution presented sentence by sentence

Figure 3.4.2 shows the percentage of participants in each group who correctly explained the caution when it was presented sentence by sentence

When each sentence was presented in turn, demonstrated understanding of the caution improved. For all three groups of participants, the first sentence was simple. However, the second sentence, in particular, remained difficult for the 'general population' participants, and their performance was very significantly worse than that of the other two groups. More detailed analysis showed that the middle sentence was not explained correctly by any of the general population participants of below average intellectual ability (i.e. prorated Full Scale IQ score < 90). However, most of the police officers demonstrated understanding of all the material. The exception was the middle sentence, which three officers (a probationer constable, and two more experienced officers) did not explain correctly.

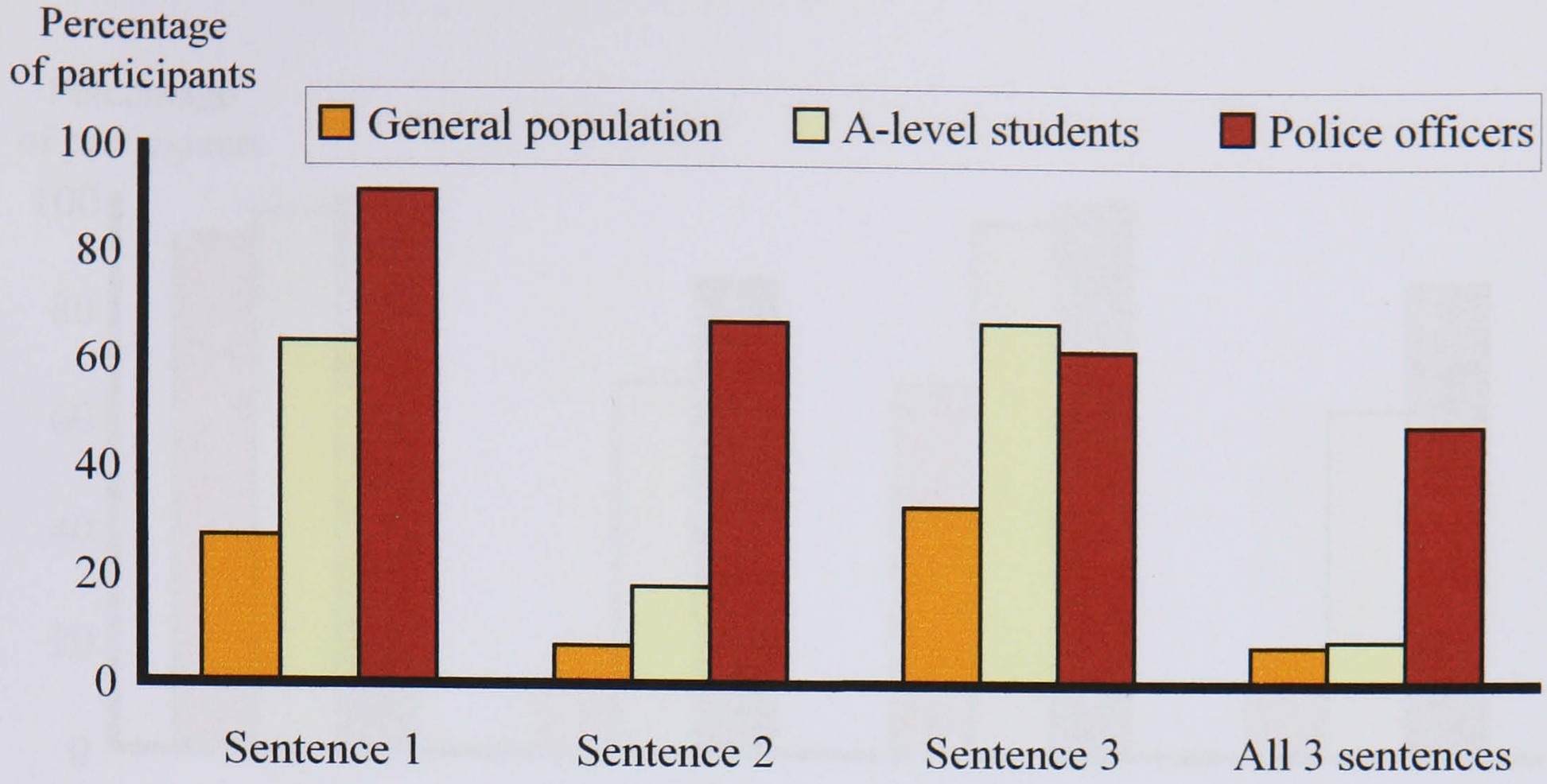
Comparison with the draft 60-word caution (1994)

Contrary to expectations, statistical comparison using the Chi-square test (see Appendix 7 for details) showed that, when presented in its entirety, the current caution was no easier to explain than the draft version: understanding of all three sentences of the draft version was demonstrated by 7% of 'A' level students (Gudjonsson and Clare, 1994); understanding of the current version by 8%.

Figure 3.4.3 shows the percentage of 'A' level students who explained the draft version and the current caution when they were presented sentence by sentence.

Statistical analysis showed that, with the exception of the third sentence, the caution has not been simplified. The proportions of participants able to explain all three sentences of the draft and current cautions were very similar.

Figure 3.4.1 Proportion of participants in each group who correctly explained each sentence, and all three sentences, of the caution presented in its entirety

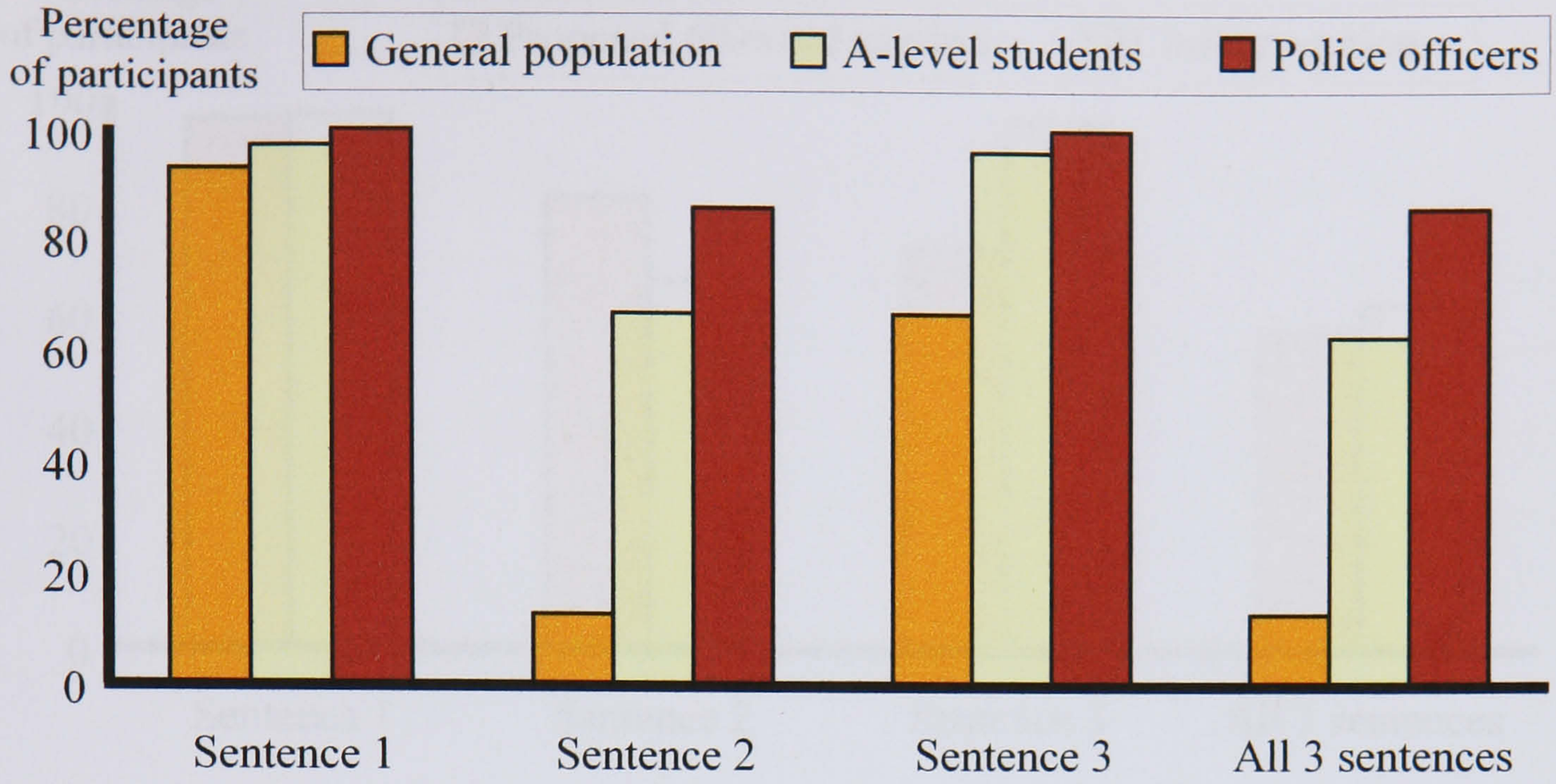


No. and % of participants who correctly explained each sentence, and all three sentences			χ^2 value	
General population n = 15	A-level students n = 72	Police officers n = 21	A-level students vs. General population	Police officers vs. A-level students
Sentence 1	4 27%	45 63%	19 91%	6.48*	5.93*
Sentence 2	1 7%	13 18%	14 67%	Fisher exact p = 0.25 n.s.	18.65***
Sentence 3	5 33%	48 67%	13 62%	5.79*	0.16 n.s.
All 3 sentences	1 7%	6 8%	10 48%	Fisher exact p = 0.65 n.s.	Fisher exact p = 0.0002***

Police officers vs. General population on Sentence 3: $\chi^2 = 2.86$ n.s.

n.s. not significant; * $p<0.05$; ** $p<0.01$; ***$p<0.001$ (df = 1)

Figure 3.4.2 Proportion of participants in each group who correctly explained each sentence, and all three sentences, of the caution when it was presented sentence by sentence

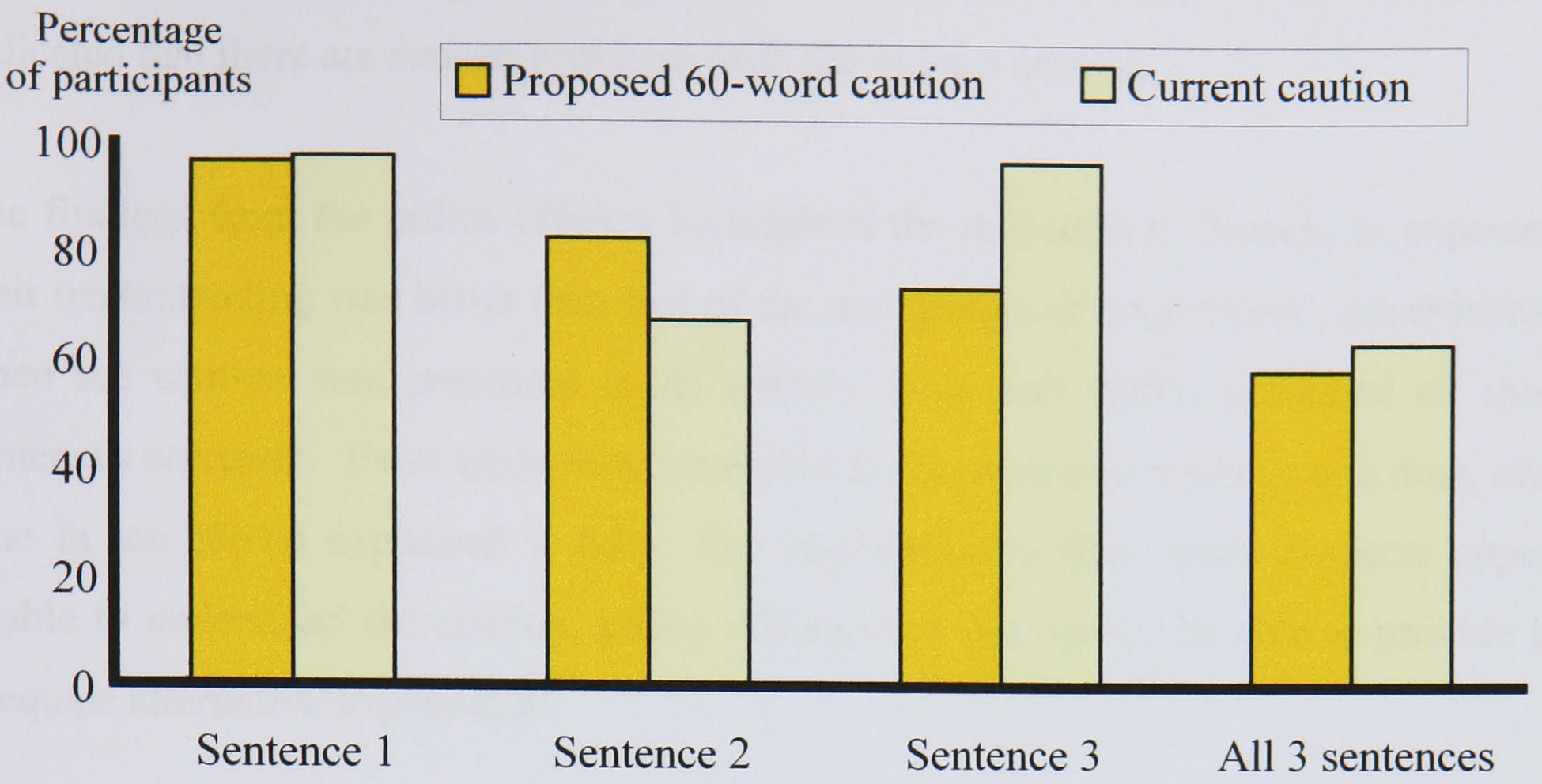


	No. and % of participants who correctly explained each sentence, and all three sentences			χ^2 value	
	General population n = 15	A-level students n = 72	Police officers n = 21	A-level students vs. General population	Police officers vs. A-level students
Sentence 1	14 93%	70 97%	21 100%	Fisher exact p = 0.92 n.s.	Fisher exact p = 0.60 n.s.
Sentence 2	2 13%	48 67%	18 86%	14.45***	2.86 n.s.
Sentence 3	10 67%	69 96%	21 100%	Fisher exact p = 0.003**	Fisher exact p = 0.45 n.s.
All 3 sentences	2 13%	45 63%	18 86%	12.08**	4.01*

Police officers vs. General population on Sentence 1: Fisher Exact p = 0.42 n.s.

n.s. not significant; * p<0.05; ** p<0.01; ***p<0.001 (df = 1)

Figure 3.4.3 Percentage of A-level students who explained the proposed 60-word caution and the current caution when they were presented sentence by sentence



	No. and % of participants who correctly explained each sentence, and all three sentences		χ^2 value	Fisher exact prob.
	Proposed 60-word caution n = 45	Current caution n = 72		
Sentence 1	43 96%	70 97%		0.63 n.s.
Sentence 2	37 82%	48 67%	3.37 n.s.	
Sentence 3	33 73%	69 96%	12.54***	
All 3 sentences	26 58%	45 63%	0.26 n.s.	

n.s. not significant; * $p<0.05$; ** $p<0.01$; ***$p<0.001$ (df = 1)

3.4.4 DISCUSSION

Consistent with the findings of Shepherd et al. (1995), the results of this small study indicated that there are serious problems with the current caution.

The findings from the police officers highlighted the difficulties. Though, as expected, their understanding was better than that of the two groups of 'laypersons', nevertheless, when the caution was presented in its entirety, only half (48%) explained all three sentences correctly. Even when they were able to focus on one sentence at a time, only nine in ten (86%) explained it fully. The implication is that, when suspects appear unable to understand the caution, police officers will not always be able to provide an adequate alternative explanation.

These problems were even more marked for the other two groups of participants. Under conditions offering the maximum opportunity to study the material, the caution was explained fully by only six out of ten (63%) of the students and one in ten (13%) of the general population participants. Even fewer demonstrated understanding when it was presented in its entirety, as would happen in real life. For all three groups, the middle sentence, which contains the information about the modification of the right to silence and its legal implications, presented most problems. Of particular concern, given that many suspects are intellectually disadvantaged (Gudjonsson et al., 1993), none of the 'general population' participants who were of below Average ability (Full Scale IQ < 90) explained it correctly.

Contrary to expectations, the current caution, despite being much more succinct than the draft, did not appear any easier overall for the students to understand. Only the third sentence is significantly less complex. Admittedly, no formal attempt was made to ensure that the student participants matched those who took part previously (Gudjonsson and Clare, 1994) but both groups were studying for Psychology 'A' level and there had been no change in the criteria for entry to the college. It seems reasonable to assume that the participants in the two studies were similar. The implication is that, among people with mild learning disabilities, understanding of the current version would be no better than that of the draft.

3.5 GENERAL DISCUSSION

In this chapter, three small experimental studies have been reported, relating to understanding of the information about the caution and the legal rights presented in the *Notice to Detained Persons*. Based on Gudjonsson's (1992a, 1993, 1994, 1999) suggestion that limited understanding of the caution and legal rights is a 'psychological vulnerability' for people with mild learning disabilities, the purpose was to assess the adequacy of this intended safeguard.

As expected, compared with their counterparts in the general population, people with learning disabilities have a lower level of initial knowledge, and access to the information has less impact on both their knowledge and their understanding. The findings are consistent with other studies in which the performance of people who are chronologically young or intellectually disadvantaged has been compared with that of their 'average' counterparts (Cooke and Philip, 1998; Fulero and Everington, 1995; Grisso, 1981; Olley and Ogloff, 1993).

However, from a practical perspective, it is the absolute, rather than the comparative, performance of people with mild learning disabilities which is important. The limited extent of their knowledge and understanding of the information provided by the *Notice to Detained Persons* and intended to safeguard suspects is disturbing. Assuming that, because of their reading difficulties, many such persons would rely on the part presented orally by the Custody Officers, the findings suggest that even the basic information about the legal rights (the second and third sentences of the *NDP*, Table 3.3.3) would be explained correctly by no more than one in six persons with learning disabilities. It is a limitation of Study 3 (Ch. 3.4) that understanding of the current caution among this group was not assessed directly. Still, given the positive relationship between intellectual ability and understanding of the caution (Cooke and Philip, 1998; Fulero and Everington, 1995; Grisso, 1981; Olley and Ogloff, 1993), and the finding that, even when it was presented sentence by sentence, none of the 'general population' group could understand its meaning fully, it seems likely it would be too complex for individuals who are significantly intellectually disadvantaged. This is of particular concern in the light of evidence (see Ch. 7.1) suggesting that vulnerable 'suspects',

including people with mild learning disabilities, often do not receive the 'Appropriate Adult' provision to which they are entitled.

Consistent with Grisso's (1981) findings in the U.S.A., difficulties in recall and understanding of the caution and legal rights are not limited to people with mild learning disabilities – a group already, of course, recognised as 'vulnerable'. Worryingly, all three studies provide evidence that, despite, as expected, some advantage for participants who are intellectually able or have special training, the material is still problematic for participants in the 'general population' (job centre attenders, hospital staff and other people in paid employment, 'A' level students, police officers). Unfortunately, in England and Wales, as in other jurisdictions, there are no agreed criteria for the acceptability of legal material (Penny Letts, personal communication, 1999). However, recent case law and proposed legislation have suggested that information relevant to a particular decision should be provided in 'broad terms and simple language' (*Re C (Adult: Refusal of Treatment) 1994*); s. 2(3), draft Bill on Mental Incapacity (Law Commission, 1995). Using this standard, Study 1 (Ch. 3.2) suggests that, consistent with Gudjonsson's (1990a, 1991a) initial findings, the version of the caution and legal rights presented in the original *NDP* was inadequate for its intended purpose of safeguarding suspects. Moreover, and of particular concern, there is no evidence that the subsequent revisions have made the material easier. The original caution, which was in use until 31st March, 1995, was recalled by at least three-quarters (see Fig. 3.2.2) of GP participants, and was paraphrased correctly, following sentence by sentence presentation, by more than 2 in 3 of a similar group (71%, see Table 3.3.3). In comparison, barely six in ten (63%) of the 'A' level students, who were probably at of at least equal intellectually ability, were able to demonstrate understanding of the current caution. Similarly, though the use of different methodologies means that only the Flesch Formula (Flesch, 1948) analyses are directly comparable, and there are obviously gross differences between different sentences of the *NDP*, the responses to the assessments of recall of the original version and understanding of the revised version (Tables 3.2.2 and 3.3.3) do not suggest, overall, that the accessibility of the material to 'general population' participants has been improved substantially.

What is it that makes the information about the caution and the legal rights in the *NDP* so difficult? First, some of the sentences which appear hardest are very long (e.g.

sentence 20 in Table 3.3.3 contains 32 words). Shepherd et al. (1995), discussing the current caution, argue that such constructions are simply beyond the limit of working memory, which is itself related to intellectual ability, and to verbal functioning, in particular (Baddeley, 1990). However, this cannot be the only explanation: comparison of the draft and current versions of the caution suggests that, at least when complex legal concepts are involved, simply condensing the material is unhelpful (see Figure 3.4.3). For example, across all three groups in Study 3 (Ch. 3.4), the most common errors involved gross misunderstanding of s. 34 of the *Criminal Justice & Public Order Act 1994* by explaining the middle sentence as a *loss* of the right to silence (e.g. 'if you don't (answer questions), your case will look bad in court') or as a warning about the possible adverse effects of *any* inconsistency between explanations given at different times.

Secondly, some of the language used in the *NDP* seems very hard. Consistent with their limited ability to paraphrase some sentences, participants in Study 2 commented spontaneously that they were very uncertain about the meaning of specific expressions, such as 'exceptional circumstances' (sentences 8, 16 and 23, Table 3.3.3.) and 'investigative and administrative action' (sentence 26, Table 3.3.3). More fundamentally, similar to Grisso's (1981) findings on the *Comprehension of Miranda Rights* task, some of the participants, including men and women in the general population, reported that they did not understand the meaning of a 'right'. Their requests for clarification suggested that they understood the word in its sense of 'correct'. These comments indicate that the language used does not reflect the way in which people speak in everyday life. Focussing on the word 'caution', Rock (1999) has investigated this possibility from a forensic linguist's perspective. Based on an analysis of the British sections of the COBUILD Bank of English (an enormous database of 'naturally occurring' oral and written texts), she argues that understanding of the 'caution' is impaired by common non-legal meanings and usage. In addition, even within legal contexts, the word itself is ambiguous: a 'caution' also refers to the sanction given by the police to detained persons who admit to minor crimes.

Furthermore, though it was not examined here, the layout of the *NDP* (Form 3053) itself does not appear to have been drafted in accordance with the literature on preparing text to maximise its accessibility (e.g. Hartley, 1978 et seq.). Notwithstanding the reading

difficulties of many suspects, perhaps it is not surprising that only a minority of detained persons seem to read the leaflet when it is offered by Custody Officers (Gudjonsson et al., 1993).

Whilst adverse inferences are no longer permissible in situations in which the suspect has had no access to legal advice (see s. 58 of the *Youth Justice and Criminal Evidence Act 1999*), understanding of the caution and legal rights, particularly the right to legal advice, has assumed greater importance since the introduction of the modification of the right to silence (Bucke et al., 2000; Zander, 1995). Yet the findings suggest that, consistent with the suggestion made by Gudjonsson (1992a, 1993, 1994, 1999), comprehension of the material providing the relevant information is very limited, particularly among people with mild learning disabilities. They would not be able to undertake even this initial step in exercising their rights. In the actual situation of a police station, suspects are unlikely to receive any help to overcome their comprehension difficulties. The method most often used by the police to assess whether a suspect has understood the caution is to ask ('do you understand?'). A series of consistent findings (Fenner, Gudjonsson and Clare, 2002; Grisso, 1981; Cooke and Philip, 1998; Shepherd et al., 1995) indicate that this strategy is ineffective, though it remains unclear whether people are aware of their difficulties but ashamed to admit to them (as suggested by one of the police officers interviewed by Bucke et al., ibid., p. 28), or are simply misguidedly confident. A simple improvement to current practice would be for police officers and solicitors to ask suspects to explain the caution in their own words prior to any formal interviewing, with standardised measures, making fewer demands on verbal ability than the main methods (recall and paraphrasing) used in these studies should also be developed to investigate understanding.

At the same time, since Study 2 (Ch. 3.3) and Study 3 (Ch. 3.4; and subsequent studies by Shepherd et al., 1995; Fenner et al., 2002) have shown that understanding of the caution is improved when it is presented sentence by sentence, rather than in its entirely, this simple and inexpensive change should be implemented. Nevertheless, the uncomfortable implication of Study 3 remains: even if individuals did admit to problems in understanding, many police officers would be unable to explain the material adequately. This aspect of the legal rights is simply too complex.

Jackson (1995) contends that legal language has an archival, not a communicative, function, implying that the *NDP* is presented merely to ensure that evidence gained during interviews fulfils the criteria for admissibility in court; comprehension of the material is irrelevant. Support for this perspective is provided by the lack of progress in improving the caution and legal rights, but such cynicism is not helpful in trying to devise practical strategies for alleviating the likelihood of miscarriages of justice involving people with learning disabilities. Later in this thesis, some of these practical strategies will be considered. First, however, another putative 'psychological vulnerability' will be investigated. Consistent with the naïvety about the adversarial nature of the criminal justice system displayed by some participants in their responses to the questionnaire measures, the possibility is explored that people with mild learning disabilities have greater difficulty than their peers in the general population in using relevant information in the decision-making which may be required of suspects in police interviews.

CHAPTER 4

DECISION-MAKING DURING POLICE DETENTION AND INTERVIEWING

In Ch. 2, it was suggested that, whilst being detained and interviewed by the police is inherently stressful (Gudjonsson, 1992a; Hodgson, 1994; McConville et al., 1991; Irving, 1987), many suspects remain active decision-makers, attempting to generate, implement and evaluate strategies which will protect them from inadvertently making unreliable, misleading or self-incriminating statements.

According to Gudjonsson (1992a, 1993, 1994, 1999), one of the 'psychological vulnerabilities' of people with mild learning disabilities is that, compared with their counterparts in the general population, they may be impaired in their ability to make decisions which safeguard their rights. The studies reported in Ch. 3 indicate that people with learning disabilities may have more limited knowledge and understanding of the information in the *Notice to Detained Persons*; other relevant material may also not be known about or understood. Moreover, even when they are aware of, and comprehend, this information, they may have more difficulties than their 'general population' peers in using it to minimise the likelihood that they will be involved in miscarriages of justice. The purpose of this chapter is to describe an exploratory experimental study to investigate decision-making during police detention and interviewing by people with learning disabilities.

4.1 BACKGROUND

4.1.1 THE USE OF INFORMATION IN DECISION-MAKING

Based on a review of the psychological literature, Irving and Hilgendorf (1980; Hilgendorf and Irving, 1981; see Ch. 2) have proposed that police detention and interviewing involves suspects in a series of complex and demanding decisions.

Theoretical analyses of the abilities involved in valid legally-significant decision-making have suggested that, whilst understanding of information relating to the decision is necessary (see Ch. 3.1.1), it is not sufficient (Appelbaum and Grisso, 1988, 1995; Grisso and Appelbaum, 1998; Law Commission, 1995; *Re C (Adult: Refusal of Treatment) 1994*). Individuals need also to be able to 'use' that information in order to make a choice.

What does it mean to 'use' information? In the U.S.A., it is now widely accepted that two separate abilities are involved (Appelbaum and Grisso, 1988, 1995; Grisso and Appelbaum, 1998):

- '*appreciating*', or believing in, the significance to a particular situation of relevant information, and its implications;
- '*reasoning*' about, or 'weighing up', that information in order to reach a decision.

Some important case law in England and Wales (*Re C (Adult: Refusal of Treatment) 1994*; *Re MB 1997*) has supported a similar approach. In the Government's proposals for reform of the legislation relating to decision-making by adults with a 'mental disability' (such as a learning disability; Lord Chancellor's Department, 1999), however, appreciation and reasoning have been combined. Following the Law Commission's (1995) recommendation, it is proposed that an individual is able to 'use' relevant information if he or she can 'make a decision based on (that) information' (Lord Chancellor's Department, 1999, para. 1.6). Nevertheless, for analysing the processes involved in decision-making, the articulated approach adopted in the U.S.A. (Appelbaum and Grisso, 1988, 1995; Grisso and Appelbaum, 1998), which is supported by the empirical evidence (Grisso et al., 1995), seems more helpful.

Adopting the American framework, then, a suspect who is able to 'use' the information about legal advice in the *Notice to Detained Persons* should understand its key points: that such advice might be helpful, is free of charge, and is available at any time during a period of police detention. More than this, though, he or she should also believe that such advice is applicable to his or her particular situation and understand the likely consequences of accessing, or not accessing, it. Gudjonsson (1992a, p. 252 ff.) reports a case from the mid-1970s, in the U.S.A., which illustrates well the difference between 'understanding' information and 'using' it to make a decision, and the problems which

may ensue when a suspect does not 'appreciate' the significance of information about his or her rights.

Peter Reilly was a suspect of above average intellectual ability, who, after a period of intensive interrogation, confessed to the murder of his mother. He was convicted but released two years later when it was found that the prosecution had suppressed evidence showing that he could not have been the murderer. Before he was interviewed, he had made a decision to waive his *Miranda* rights; after his release he explained why:

> '(b)ecause I hadn't done anything wrong, and this is America, and that's the way I thought it was' (Connery, 1977, p. 42., cited in Gudjonsson, 1992a, p. 253).

Mr. Reilly's explanation demonstrates extreme naïvety about the potential consequences of an interrogation in a criminal justice system where there is strong political pressure to identify and punish the perpetrators of serious crimes.

Using the same (American) framework, the second aspect of 'using' information involves 'reasoning', or weighing it up to reach a decision. This involves processing the information and considering the consequences and benefits of making one choice rather than another, so that the decision made is a 'rational product' (Jones and Keywood, 1996) of the person's value system, even if its *outcome* seems unwise to others. That is, the decision should not be based on:

> 'a compulsion, the overpowering will of a third party or any other inability to act on relevant information' (Law Commission, 1995, para. 3.18).

A form of 'compulsion' which may be particularly relevant to suspects, given that many of them are substance abusers (Gudjonsson et al., 1993), is the wish to complete police procedures as rapidly as possible in order to alleviate symptoms of opiate withdrawal.

Two psychological approaches to examining how information is used in decision-making are of particular relevance to this thesis. First, based on their theoretical analysis, Grisso and his colleagues (Appelbaum and Grisso, 1995; Grisso and Appelbaum, 1995; Grisso et al., 1995) developed two research measures to investigate appreciation and reasoning in treatment decisions by people with mental or physical disorders. The first of these, the *Perceptions of Disorder* (*POD*), assesses 'appreciation'. It comprises a standardised interview based on a vignette relating to the participant's particular health problem. The interview can be scored reliably to assess two types of

difficulties: (i) acknowledgement of the disorder (the *Nonacknowledgement of Disorder*) and (ii) acknowledgement of the potential for benefiting from treatment (the *Nonacknowledgement of Treatment Potential*). The main part of the second measure, which assesses reasoning, *Thinking Rationally About Treatment* (*TRAT)*, also comprises a vignette relevant to the participant's disorder. This is followed by a description of three possible treatments and their benefits and risks. Participants are asked to choose one treatment; a series of standardised questions is then used to elicit the reasoning underlying their choice. The responses are scored according to the extent to which they demonstrate operationalised, cognitive abilities including: a) information-seeking; b) consequential thinking or evidence of the use of consequences in making a choice; and c) the generation of consequences or the ability to think of the real-life impact of the risks and benefits of different forms of treatment. These detailed measures were too unwieldy for clinical practice and have been simplified considerably to form part of the MacArthur Competence Assessment Tool-Treatment (McCAT-T, Grisso and Appelbaum, 1998).

The second, and more traditional, psychological approach is based in a different framework. 'Subjective expected utility maximisation theories' (Luce, 1967, following von Neumann and Morganstern, 1947) were originally developed from mathematical and economic concepts to try to explain individuals' decisions in situations which are 'risky' or uncertain (see Baron, 2000, for a detailed account). A shared feature of these theories is the assumption that a person uses relevant information to choose the course of action which, *subjectively*, has the

- most desirable consequences (that is, the highest *utility*); and
- highest probability of occurrence (that is, the greatest *expected* utility).

Decision-making comprises a 'trade-off' between the perceived consequences and the perceived likelihood that these consequences will occur. These theories have been subjected to considerable criticism, primarily on the grounds that they are 'normative', in that they present an idealised account of behaviour, rather than 'descriptive' of everyday practice (Bell, Raiffa and Tversky, 1988). Certainly, empirical findings based on participants' explanations of their decision-making (for example, Baron, Granato, Spranca and Teubal, 1983) suggest that the process is not always either rational or coherent. Such findings have led to the development of more complex models for representing how decisions might be made (Baron, 2000). Nevertheless, it has been

argued that subjective expected utility maximisation theories are 'essentially correct' (Baron, 1994, p. 316). Perhaps surprisingly, then, their application to decision-making by people with learning disabilities has been very limited.

4.1.2 PREVIOUS STUDIES OF DECISION-MAKING AMONG PEOPLE WITH LEARNING DISABILITIES

Traditionally, it has been assumed that, because of the cognitive impairments which characterise their condition, people with learning disabilities have difficulty in making decisions which lead to successful problem-solving (see review by Ferretti and Cavalier, 1991). Though based in cognitive tasks which are rather unrelated to everyday life, a substantial body of experimental evidence supports this assumption. Compared with their counterparts in the general population, people with learning disabilities have greater difficulties in both generating novel problem-solving strategies and applying previously learned strategies spontaneously (see Ferretti and Cavalier, 1991). Moreover, those strategies they do attempt to apply are less likely to result in successful solutions (for example, Bray, Saarnio, Borges and Hawk, 1994; Bray, Saarnio and Hawk, 1994; Ferretti, 1994).

Until recently, however, there were few experimental attempts to examine decision-making by people with learning disabilities in everyday life. An early study, informed by the theoretical and empirical work of Grisso and Appelbaum and their colleagues in the MacArthur Treatment Competence Study (Appelbaum and Grisso, 1988 et seq.), was carried out by Morris et al. (1993). Ability to consent to each of three hypothetical health care treatments which were presented through vignettes, was compared, using an interview, among two groups with putative 'mild' or 'moderate' learning disabilities (intellectual ability was not tested formally) and their peers in the general population (N=15 in each group). Consistent with the studies of understanding of the caution and legal rights, or their equivalent (Cooke and Philip, 1998; Fulero and Everington, 1995; Grisso, 1981; Olley and Ogloff, 1993), the 'learning disabilities' groups were much less likely than the 'general population' group to appear able to give or withhold consent. In addition, compared with their peers, people with learning disabilities demonstrated much greater understanding of factual information about the interventions (e.g. the procedure) than of issues relating to their rights (for example, the possibility of making a free choice,

and respect for a refusal of treatment by a competent adult). Indeed, some participants with learning disabilities seemed bewildered by the idea that they be allowed autonomy.

Similar findings have been obtained when the decision has involved a health care intervention of clinical significance to the participant (Wong et al., 2000). As expected, compared with their counterparts in the general population, significantly fewer of the men and women with mild learning disabilities (N=20, pro-rated Verbal IQ: 60.2, s.d. 8.8, using the WAIS-R, Wechsler, 1981) were judged able to give or withhold consent to the intervention. Similarly, whilst methodological differences precluded direct comparison with their 'learning disabilities' counterparts in the earlier study by Morris et al. (1993), the pattern of responses indicated that, among this group, understanding of factual information (such as the procedure involved) was better than appreciation of its significance to the participant's health.

Despite different methodologies and theoretical frameworks, the findings of the studies by Morris et al. (1993) and Wong et al. (2000) are consistent with those of the arcane experimental investigations (Bray et al., 1994a, b; Ferretti, 1994; see Ferretti and Cavalier, 1991; Jenkinson, 1993): compared with their 'general population' peers, people with learning disabilities are more likely to have difficulties making decisions. In addition, there is substantial evidence that the most intellectually disadvantaged participants generally experience the greatest difficulties (Arscott et al., 1998, 1999; Gudjonsson, Murphy and Clare, 2000; Gunn, Wong, Clare and Holland, 1999; Morris et al., 1993).

All these studies highlight the importance of cognitive abilities in making decisions. Consistent with a 'descriptive' approach (Bell et al., 1988), affective factors may also be relevant, particularly in the process of 'using' information (Bursztajn, Harding, Gutheil and Brodsky, 1991). As yet, little attention has been paid to their possible role in decision-making by people with learning disabilities.

An exception is a preliminary study by Jenkinson and Nelms (1994) exploring the strategies which people with learning disabilities use to cope with the emotional demands of decision-making. Ten vignettes were devised involving choices which were 'major' (e.g. moving in with a partner against the advice of family or friends) or 'minor'

(e.g. selecting between two enjoyable TV programmes). These were presented to a group with putative 'mild' or 'moderate' learning disabilities (N=25) attending designated day-services, and a comparison group of University students (N=14). Participants were asked to make decisions and explain their rationales and their responses were categorised using an established framework (Janis and Mann, 1977). The 'learning disabilities' group were significantly less likely to provide a 'vigilant' response, where relevant information about the options and its consequences was sought and considered, particularly when the decision was 'major'. Instead, consistent with the findings of Morris et al. (1993), they were significantly more likely to respond with 'defensive avoidance', characterised by procrastination, attempts to get others to make the decision, or ready acceptance of any options offered.

In a second study, Jenkinson (1999) investigated the impact on decision-making of 'learned helplessness' (Seligman, 1975; Abramson, Seligman and Teasdale, 1978). Though conceptualised in different ways, learned helplessness among human beings normally comprises: a) a subjective perception among individuals that they cannot exert control over important outcomes, and b) corresponding impairments in these individuals' initiation of, and perseveration in, making decisions to solve problems. It is a condition which develops when people lose, or are denied, control of their own lives and is commonly observed in people with learning disabilities (Weisz, 1999). In Jenkinson's (ibid.) study, the participants (N=48), who were known to have significant impairments of both their intellectual and social functioning, completed a brief self-report questionnaire derived from existing measures of learned helplessness. Their scores were used to allocate them to a 'high' or 'low' learned helplessness group. Four of the decision-making vignettes used previously (Jenkinson and Nelms, 1994) were then presented. The reasoning given by participants for each of their choices were then scored by a panel, using operationalised criteria. The most relevant finding is that, for three of the four vignettes (the fourth seemed easy for everyone), participants in the 'high' learned helplessness group were significantly less likely than their low-scoring counterparts to consider the consequences of their decisions or to seek further information; in Janis and Mann's (1977) terminology, they demonstrated less evidence of 'vigilance'.

Exploration of the impact of learned helplessness on the types of decisions which adults may have to make in everyday life has barely started; even less is known about the possible effect of other affective factors. Still, Jenkinson's two studies (Jenkinson, 1999; Jenkinson and Nelms, 1994) and the study by Morris et al. (1993) suggest that decision-making involves more than cognitive abilities, particularly when it is likely to have major consequences and/or be legally significant.

4.1.3 DECISION-MAKING DURING POLICE DETENTION AND INTERVIEWING

Though theories of 'subjective expected utility maximisation' (Luce, 1967) have not been used to inform studies of decision-making in everyday life by people with learning disabilities, they have been influential in understanding suspects' decision-making during police detention and interviewing. Based on their review of the psychological literature, Hilgendorf and Irving (1981) suggested that detained persons are in a situation which requires a complex series of decisions, including:

- whether or not to seek legal advice;
- whether to speak or remain silent;
- whether or not to tell the truth;
- whether to tell the whole or a part of the truth;
- whether or not to make self-incriminating admissions including a confession.

At each point, they suggest, the suspect's decision depends on his or her perceptions, however unrealistic, of a) the situation, and b) the adverse and beneficial consequences, for the self and/or others, of strategies for coping with this situation.

Other frameworks for understanding decision-making during police detention and interviewing have also emphasised the importance of suspects' perceptions of their situation and its consequences. For example, the 'Reid' model (Inbau, Reid and Buckley, 1986; and see Gudjonsson, 1992a), developed in the U.S.A. by a former police officer, uses psychological principles to:

- decrease the perceived adverse consequences of admissions, whether 'real' (e.g. being charged, imprisoned) and/or 'personal' (e.g. reduced self-esteem); and
- increase the perceived benefits of denial

in order to encourage detained persons to make self-incriminating admissions. Though they formed the basis of a police training manual, these techniques are essentially

coercive. Under *PACE*, their use now leads to confession evidence being ruled inadmissible (for example, in *R. v. Mason (Carl) 1988*, s. 78 was used to appeal successfully against conviction on the grounds that the strength of the forensic evidence had been misrepresented to the suspect and his solicitor).

Whilst the 'Reid' model focusses on influencing suspects' decision-making by external methods, traditional psychodynamic theories (e.g. Reik, 1959; Berggren, 1975; see Gudjonsson, 1992a) highlight the role of internally-generated pressures. It is suggested that suspects make self-incriminating admissions to resolve intrapsychic conflicts between the perceived 'costs' and 'benefits' of acknowledging their behaviour. Though there are case reports supporting this account (Cordess and Cox, 1996), such theories do not attempt to explain, for example, the impact of external pressures and safeguards in facilitating and inhibiting self-incriminating admissions.

Focussing specifically on the process of interviewing during police detention, Moston and his colleagues (Moston et al., 1992; Moston, 1996) have also drawn attention to the role of suspects' perceptions in their decision-making. They suggest that the range of positions (denial, non-committal, admitting) adopted by suspects at the start of interviews reflects their subjective view of the interaction between two main groups of factors, relating to (i) background (e.g. the type and severity of the alleged offence, the age and sex of the suspect); and (ii) context (e.g. the presence of legal advice, the strength of evidence). These factors also influence the initial strategy used by interviewers. As the interview develops, suspects' perceptions may change, leading to an amendment of their initial positions. This model, which highlights the 'dynamic' (McConville et al., 1991) nature of an interview, has empirical support (Baldwin, 1993, 1994; McConville and Hodgson, 1993; Pearse and Gudjonsson, 1996). It is, however, based on questionnaires completed by police officers and analyses of audio-tapes of interviews (see also the work of Pearse, 1997; Pearse et al., 1998), not directly on the accounts of men and women who have been interviewed.

In contrast, suspects' accounts form the basis of Gudjonsson's (1992a) model, which also focusses on interviews. He suggests that suspects' self-incriminating admissions can be understood by examining their perceptions of its antecedents and immediate and long-term consequences. Expanding Hilgendorf and Irving's (1981) suggestion that a

range of factors is involved, both antecedents and consequences are conceptualised broadly, to include emotional, cognitive, physiological, social and situational events. This broad model incorporates the essential features of many of the other theories: for example, emotional events parallel the intrapsychic conflicts proposed by psychodynamic theorists, whilst situational events can include the external pressures highlighted by the Reid model. The framework has been found to be useful in understanding individual cases, including a proven false confession to a double murder (Gudjonsson and MacKeith, 1994).

Surprisingly, few empirical attempts have been made to draw directly on the accounts of suspects in developing models of decision-making during police detention and interviewing. The most important exception is a series of studies using a standardised questionnaire, later developed into the *Gudjonsson Confession Questionnaire* (*GCQ*, Sigurdsson and Gudjonsson, 1994). The *GCQ* has been used to examine, retrospectively, the decision-making of convicted prisoners who, at some time, have confessed to a crime (Gudjonsson and Bownes, 1992; Gudjonsson and Petursson, 1991; Sigurdsson and Gudjonsson, 1994, 1996a, b). The data suggest that, for each suspect, the decision is likely to reflect an idiosyncratic combination of:

facilitative factors:

- external pressure (for example, fear of being locked up);
- internal pressure (guilt, feelings of wanting help); and
- perceived proof (the strength of evidence against the person);

and *resistance* or *inhibitory* factors:

- avoidance of the 'real' and 'personal' consequences of an admission (going through the criminal justice system, difficulties in self-acceptance).

Based on Irving and Hilgendorf's model (Hilgendorf and Irving, 1981; Irving and Hilgendorf, 1980), the balance, for any particular suspect, between these factors is likely, in part, to be influenced by the impact of 'individual differences' on his or her perceptions of police detention and interviewing. Several relevant differences have been identified empirically. These include:

- demographic factors, such as age (Baldwin and McConville, 1980; Gudjonsson and Petursson, 1991; Softley et al., 1980; but c.f. Moston et al., 1992);

- life experiences, including previous convictions (Moston et al., 1992; Softley et al., 1980; but c.f. Baldwin and McConville, 1980) and experience of custody (Pearse et al., 1998); and
- personality factors, such as the extent to which societal values have been internalised (Gudjonsson and Petursson, 1991; Sigurdsson and Gudjonsson, 1996b), suggestibility (Gudjonsson, 1984 et seq.), and compliance (Gudjonsson, 1989a et seq.).

Though evidence from both experimental (Bray et al., 1994a; Bray et al., 1994; Ferretti, 1994; Ferretti and Cavalier, 1991) and everyday (Jenkinson and Nelms, 1994; Morris et al., 1993; Wong et al., 2000) tasks suggests strongly that the presence of a learning disability may affect decision-making, its possible relevance to police detention and interviewing has not, so far, been investigated.

The study reported in this chapter (see Ch. 4.3) is the only published experimental investigation of Gudjonsson's (1992a, 1993, 1994, 1999) suggestion that, compared with their 'general population' counterparts, people with learning disabilities may be impaired in their ability to make decisions which safeguard their rights during police detention and interviewing; because of this uniqueness, it is reported in detail. First, however, a methodology had to be developed; this is described in the following study.

4.2 STUDY 4: DEVELOPING AN EXPERIMENTAL METHODOLOGY TO EXPLORE DECISION-MAKING

4.2.1 INTRODUCTION

Drawing on theoretical analyses (Appelbaum and Grisso, 1988, 1995; Grisso and Appelbaum, 1998; Law Commission, 1995; *Re C (Adult: Refusal of Treatment),* 1994), individuals need not only to understand relevant information but need also to be able to use it if they are to engage in valid decision-making. The framework established in the U.S.A. (Appelbaum and Grisso, 1988, 1995; Grisso and Appelbaum, 1998) suggests that, in part, 'using' information requires appreciating its significance of the information for the situation and its implications. Focussing specifically on decisions during police detention and interviewing, Irving and Hilgendorf's influential model (Hilgendorf and Irving, 1981; Irving and Hilgendorf, 1980) also emphasises the importance of

'appreciation'. From its background in 'subjective utility maximisation theories', however, it is conceptualised in terms of the suspect's 'perception' of the situation and the consequences of different coping strategies.

A number of studies have tried to access the perceptions during police detention and interviewing of suspects or former suspects, using, for example:

- audio-tapes (Moston et al., 1992; Pearse, 1997; Pearse et al., 1998);
- interviews (Gudjonsson and MacKeith, 1994); and/or
- questionnaires (Gudjonsson and Bownes, 1992; Gudjonsson and Petursson, 1991; Sigurdsson and Gudjonsson, 1994, 1996a, b; Moston et al., 1992).

None of these studies, though, has involved experimental participants. In contrast, studies of everyday and/or legally-significant decisions have involved such participants. Mostly, they are interviewed following a (usually hypothetical) decision based on information presented as a vignette (Grisso and Appelbaum, 1995; Grisso et al., 1995; Jenkinson, 1999; Jenkinson and Nelms, 1994; Morris et al., 1993).

For present purposes, this methodology is problematic. First, vignettes, even when they are presented orally to minimise the impact of literacy problems, may be cognitively and imaginatively demanding, especially for people with learning disabilities who are more likely to have limited working memories (Baddeley, 1990). In addition, particularly when the situation is unfamiliar to participants (Morris et al., 1993), vignettes may lack the emotional salience of real-life decision-making (Bursztajn et al., 1991; Jenkinson, 1999; Jenkinson and Nelms, 1994). Secondly, the focus on a single decision does not seem appropriate. Though a substantial empirical literature has developed round the issue of whether or not to make self-incriminating admissions (Baldwin and McConville, 1980; Gudjonsson, 1992a; Gudjonsson and Bownes, 1992; Gudjonsson and Petursson, 1991; Inbau et al., 1986; Irving and Hilgendorf, 1980; Moston, 1996; Moston et al., 1992; Pearse et al., 1998; Sigurdsson and Gudjonsson, 1996b; Softley et al., 1980), police detention and interviewing involves much more. Suspects have to make a series of decisions, often in rapid succession, and, especially during an interview, in the context of an unequal social interaction with one or more other people (Hilgendorf and Irving, 1981; Moston, 1996; Moston et al., 1992).

The purpose of this study (initially reported as Clare and Gudjonsson, 1995) was to develop an experimental methodology which could be used to compare the perceptions during police detention and interviewing of people with mild learning disabilities and their 'general population' counterparts.

4.2.2 METHOD

Developing the methodology

Since it is 'the principal investigative strategy employed by the police' (McConville et al., 1991, p.56), an interview was chosen as the 'event'. Ethical and practical reasons precluded the use of an actual police interview; material from a TV programme or cinema film was also excluded because it may already have been familiar to some participants. Finally, a decision was made to use a fictional film, specially made for this study.

Initially, the 'think aloud' method (van Someren, Barnard and Sandberg, 1994), an established means of using verbal protocols to study on-going mental processes, was selected as a measure of the process of decision-making. Unfortunately, informal piloting with people with mild learning disabilities suggested that, because it requires the ability to provide detailed reports of thoughts and feelings, it was too complex (see Stenfert Kroese, 1997). Instead, a standardised, semi-structured, interview schedule was devised to present to participants during the film.

Preparation of the materials

Film: since case studies (for example, that of Peter Reilly, see Ch. 4.1.1.) have suggested that detained persons' perceptions may be affected by whether or not they have committed an alleged offence, the film involved a true and a false confession. From discussions with Detective Inspector John Pearse, of the Metropolitan Police Service, and with assistance from a student film-maker, Mr. Dominic Harari, a 'story-board' of the content was developed. This format was chosen because it allows detailed guidance to be given to actors whilst maximising their spontaneity.

The interviewer was played by D.I. Pearse, a serving police officer with many years' experience of conducting interviews with suspects. The 'suspect' was Mr. Robin Walton,

a semi-professional actor who has appeared in soap-operas and other TV programmes. He was recruited through a local college where he was studying drama, and paid for his participation. For the part, he was dressed in a paper suit of the type routinely given to suspects when their clothes have been removed for forensic examination.

After permission had been obtained from the station's senior officer, the film was rehearsed and shot in an interview room at Greenwich Police Station, in South London. It was 'directed' by Mr. Harari using 8 mm. professional film and two cameras to enhance its realism. With technical assistance from Mr. Tony Barnett, at the Institute of Psychiatry, and using professional equipment, it was edited onto video-tape to make it easier to use. Pauses were incorporated where the film was to be stopped to allow presentation of the interview schedule. At the end, there was a short de-briefing procedure (including the actors 'de-roling'). The duration of the entire film was just over 9 minutes.

Interview schedule: initially, items were devised in five sections, relating to the decisions believed to be of most importance to suspects: (i) exercising the caution and (ii) the legal rights; and making (iii) a true, and then (iv) a false, self-incriminating admission. To address concerns (see Ch. 3.2 and 3.3) about acquiescence (Heal and Sigelman, 1995; Sigelman et al., 1980, 1981 a, b), open-ended responses were asked first, followed by increasingly specific questions (Brown, Egan-Sage, Barry and McKay, 1996). Just before the de-briefing, a question was asked to establish the ecological validity of the film.

Informal piloting of the film and the interview schedule was carried out with men and women with mild learning disabilities and challenging behaviours who were hospital in-patients. The findings indicated that when all the items were included, the duration of the pauses was too long; as a result, participants were not able to retain a clear understanding of the plot. In addition, the number of self-contradicting responses indicated that some of the questions were poorly worded. The schedule was therefore simplified markedly by reducing the number of items in most of the sections. Further informal piloting suggested that this resulted in improvements in both retention of the plot and the level of apparently meaningful responding.

4.2.3 RESULTS

Final version of the film

A copy of the transcript of the final version is shown as Appendix 4a. The film was introduced by verbal information about its context: it shows the first interview (at 'Thamestown' police station) by a police officer ('D.I. Keith Speed') of a suspect ('Martin James'). It is explained that the suspect has broken into a house and stolen some money; the interviewing officer believes that he also killed the householder. It is stated that this is not, in fact, true: until he was arrested, the suspect knew nothing about the man's death.

As the film opens, the police officer reminds the suspect of his right to legal advice (which he waives) and presents the caution (the pre-1995 caution) then in use. The main section of the film relates to the alleged offences. Initially, the suspect denies the burglary but admits to it ('true confession') after he is confronted by eye-witness evidence of his involvement. The police officer continues by suggesting that he 'knows when people are telling the truth' and that what the suspect has reported is 'half the story'. The officer then reassures the suspect that he will feel 'greatly relieved' when he 'gets it off (his) chest'. In response, the suspect admits to killing the householder ('false confession'). Since he is distressed, the police officer terminates the interview to enable him to recover his composure and obtain legal advice.

Final version of the interview schedule

The final version of the interview schedule is shown as Appendix 4b. It contains two types of items:

- factual, intended to examine participants' understanding of the situation in the film, and relevant information, such as the caution and right to legal advice; and
- subjective, to examine participants' use of information through accessing their perceptions of the situation and its likely consequences.

4.2.4 DISCUSSION

Using an 'iterative process' (Wright, 1988), an experimental methodology, comprising an interview schedule presented during pauses in a fictional film, was developed to

examine participants' perceptions of a police interview and the consequences of different coping strategies.

Though it used a psychological approach and attempted a high level of ecological validity, the methodology was limited. Most importantly, the 'think aloud' methodology (van Someren et al., 1994) originally planned for accessing participants' thoughts and feelings was not feasible; nor could a detailed interview be used. Compared with research measures, such as the *POD* and the *TRAT* (Grisso and Appelbaum, 1995; Grisso et al., 1995), the final version of the interview schedule was unsophisticated. Nor, in contrast with these research measures (ibid.), was any attempt made to assess its psychometric properties. At the same time, though, it remained quite complex. The multiple-choice verbal format of many of the items made heavy demands on the participants' working memories. In addition, the pilot participants seemed confused by the wording of some of the items. Unexpectedly, given that they seemed to understand 'most' (as in 'which of these is most likely', see for example, items 3.4, 5.3, Appendix 4b), and the two concepts are acquired at a similar developmental age (Piaget and Inhelder, 1969), 'least' appeared particularly problematic. A possible explanation is that the ordering of the items, immediately after each other, was too complex. Again, with hindsight, pictorial aids to understanding seriation could have been used.

Nevertheless, the findings were encouraging. Though no formal pilot study was carried out, informal piloting among a group of in-patients with mild learning disabilities and challenging behaviours, most of whom had experienced contact with the criminal justice system, suggested that the film was generally believed to be an actual interview. Moreover, some of their spontaneous remarks (for example 'I wouldn't like to be him (the suspect)'; 'he (the suspect) has got himself in a lot of trouble, hasn't he?') indicated that it was emotionally salient (Bursztajn et al., 1991; Jenkinson, 1999; Jenkinson and Nelms, 1994; Wong et al., 2000). At the same time, their responses to the factual items of the interview schedule suggested that they understood the situation as it developed during the interaction between the suspect and the police officer. With the exception of the items relating to the 'least' likely consequence, their responses seemed meaningful, suggesting that the schedule provided some access to the participants' perceptions of the available options and the consequences of those options. The materials seemed 'good enough', then, to pursue the exploratory experimental study.

4.3 STUDY 5: PERCEPTIONS OF POLICE INTERVIEWING AND ITS CONSEQUENCES

4.3.1 INTRODUCTION

Whilst there is now substantial evidence that, at least in some circumstances, individual differences may affect suspects' perceptions of police interviews (Baldwin and McConville, 1980; Gudjonsson, 1984 et seq.; Gudjonsson, 1989a et seq.; Gudjonsson and Petursson, 1991; Moston et al., 1992; Pearse et al., 1998; Sigurdsson and Gudjonsson, 1996b; Softley et al., 1980), so far, none of the studies has involved people with learning disabilities. However, their naïve responses to questionnaire items about information available to detained persons (see Figs. 3.2.2 and 3.3.1, and Ch. 3.3.4), suggest that, even when men and women with learning disabilities understand relevant information, their perceptions of its importance in safeguarding their rights during police detention and interviewing may be impaired.

Using the methodology developed in the previous study (Study 4), a preliminary investigation was carried out to explore perceptions of a police interview. From the studies (Jenkinson and Nelms, 1994; Morris et al., 1993) suggesting that people with learning disabilities may not view themselves as autonomous adults, responsible for their own decision-making, it was expected that, compared with their peers in the general population, they would be less likely to perceive the situation depicted in the filmed interview as having implications which, potentially, were very serious for the suspect.

4.3.2 METHOD

Materials

The materials comprised the video-taped film (see Appendix 4a for copy of the transcript) and the interview schedule (shown as Appendix 4b), described in Study 4 (Ch. 4.2). However, given the findings of Study 4 (Ch. 4.2), items 3.5, 4.3, 5.4, 6.3 and 8.3, asking participants which of the outcomes was 'least likely' to take place, were omitted.

Participants

Two groups of paid participants were drawn as convenience samples. Intellectual functioning was assessed using the WAIS-R (Wechsler, 1981). All the participants in the LD group and 12 of those in the GP group completed all the sub-tests. The remaining 'general population' participants had been involved a previous study (see Ch. 3.3), so the pro-rated Full Scale IQ scores they had obtained at that time (from the eight sub-tests described in Ch. 3.2) were used.

Learning disabilities: the LD group comprised 14 men and 7 women fulfilling the criteria for inclusion (see Methodological Considerations, Ch.2.4.1). In contrast with the sample used for the informal piloting (see Study 4, Ch. 4.2), all of the participants lived in the community; none was a hospital in-patient. All except one person, who described herself as Asian British, were of White British origin.

General population: the GP group comprised 8 men and 12 women, all of whom were of White British origin. All the participants in this group were in full-time paid employment, mainly as nursing staff or support workers in a hospital-based service for people with learning disabilities.

Though they were not questioned directly, as far as was known none of the participants had been detained for interviewing by the police.

Procedure

Participants were seen individually in a quiet, familiar, setting, using the same video-tape and television equipment throughout. The WAIS-R was carried out to provide the Full Scale IQ of the thirty-three participants whose intellectual ability was unknown. They were asked to watch the video-taped film of a police interview. The film and questionnaire were introduced, and their understanding of the situation presented in the film was checked. The film was shown, with pauses for the questions. It ended with the de-briefing scene. Detailed notes (in most cases, verbatim) were made of the participants' responses. Payment was offered to all participants, though it was not accepted by any of those in the 'general population' group.

Since the responses to the questions about the schedule could only be valid if participants had understood the context of the interview, their responses to these items were analysed. All but one person (in the 'learning disabilities' group) understood from

the start that the interview involved a suspect who had committed a burglary but had not killed the householder. Since this participant seemed to understand the situation after further explanation, his responses were also included.

4.3.3 RESULTS

Participant characteristics

Table 4.3.1 shows the mean scores, standard deviations and ranges for chronological age and Full Scale IQ of the two groups. The mean scores were compared statistically by calculating *t* values, which are given in the last column.

There was a significant difference between the Full Scale IQ scores, but not the chronological ages, of the two groups.

Table 4.3.1 Characteristics of the 'Learning disabilities' and 'General population' groups

	Learning disabilities			General population			*t*-value
	mean	s. d.	Range	mean	s. d.	range	
Chronological age	33	7.9	34-47	32	9.1	23-52	0.4 [n.s.]
Full Scale IQ	68	5.2	60-75	102	9.0	90-118	14.4*
No. of participants	21			20			

[n.s.] not significant (*t*-test for independent samples with equal variance, 2-tailed, df = 39)

* significant at $p<0.001$ (*t*-test for independent samples with equal variance, 1-tailed, df = 39)

Ecological validity of the interview

In order to assess its ecological validity, thirty-nine of the participants (by mistake, two of the 'general population' group were omitted) were asked just before the de-briefing procedure about the possible origin of the film: twenty-four (62%) believed the film to be a video-tape of an actual interview. Compared with their 'general population' peers, men and women with learning disabilities were significantly more likely to believe that the film

was real (76% of the LD group; 44% of the GP group; $\chi^2 = 4.13$, $p<0.05$ (2-tailed, df=1); see Appendix 7 for details).

When the fifteen participants who did not believe the event to be real were asked to explain their responses, they reported that they:

- thought the police officer was not sufficiently aggressive; and/or
- believed (incorrectly) that interviews are always carried out by two officers, and/or, though this applied only to 'general population' participants;
- realised that ethical problems would preclude the use of an actual interview.

No one reported that they found the actors unconvincing.

Three analyses were carried out to examine the hypothesis underlying the study:

- the perceived need for legal advice at different stages in the interview: at the start, if the suspect had not committed any crime; after the 'true' confession; after the 'false' confession;
- the perceived consequences of a confession to a serious crime, both immediately and following a conviction;
- the perceived consequences of a false confession, in terms of the possibility of retracting the confession immediately, and being convicted if it was maintained in court.

Perceived need for legal advice

Table 4.3.2 shows the number of participants in each group who understood the caution fully (pre-1995 version; scored in the way described in Ch. 3.2). Performance was compared using the Chi-square test (see Appendix 7 for details). As expected from the findings of Study 1 and Study 2 (see Ch. 3.2 and 3.3), the caution was understood by significantly fewer of the participants with learning disabilities. Worryingly, of the sixteen participants in this group who did not understand it, only three recognised their problems (for example, by saying 'not sure').

Table 4.3.2 also shows the number of participants in each group who understood that legal advice might be helpful during a police interview. Again, performance was compared using the Chi-square test (see Appendix 7 for details). Contrary to expectations based on

the previous studies (see Ch. 3.2 and Ch. 3.3), the 'learning disabilities' group did not have a significantly poorer understanding of the benefits of legal advice.

Table 4.3.2 Understanding of the caution and need for legal advice

	No. and % of participants demonstrating understanding		χ^2 value
	LD n=21	GP n=20	
Caution	5 24%	15 75%	8.79 *
Legal advice	14 67%	19 95%	3.58 n.s.

n.s. not significant; * $p<0.01$ (1-tailed, df = 1)

Figure 4.3.1 shows the number of participants in each group who thought the suspect in the film should have legal advice at the start of the police interview, even if he had not, in fact, committed any crime. Statistical analysis of the responses, using the Chi-square test (see Appendix 7 for details), showed that, as expected from the general hypothesis, significantly fewer of the 'learning disabilities' group perceived a need for legal advice at this stage.

However, the responses of the 'LD' group who thought it unnecessary to have legal advice at the beginning of an interview did not suggest a lack of awareness of the right. Seven (64%) understood that it would be free of charge, and nine (82%; the remaining two people were unsure) seemed to understand its benefits, stating , for example:

'the police would shout at you less in an interview with a solicitor';

'to help him (the suspect) get out of trouble...give him some advice'.

Their responses, though, typically:

'not if he didn't do a crime'; or, as three participants said:

'only if he's done a crime'

indicated that legal advice was not required by a suspect who was being questioned about an offence he had not committed.

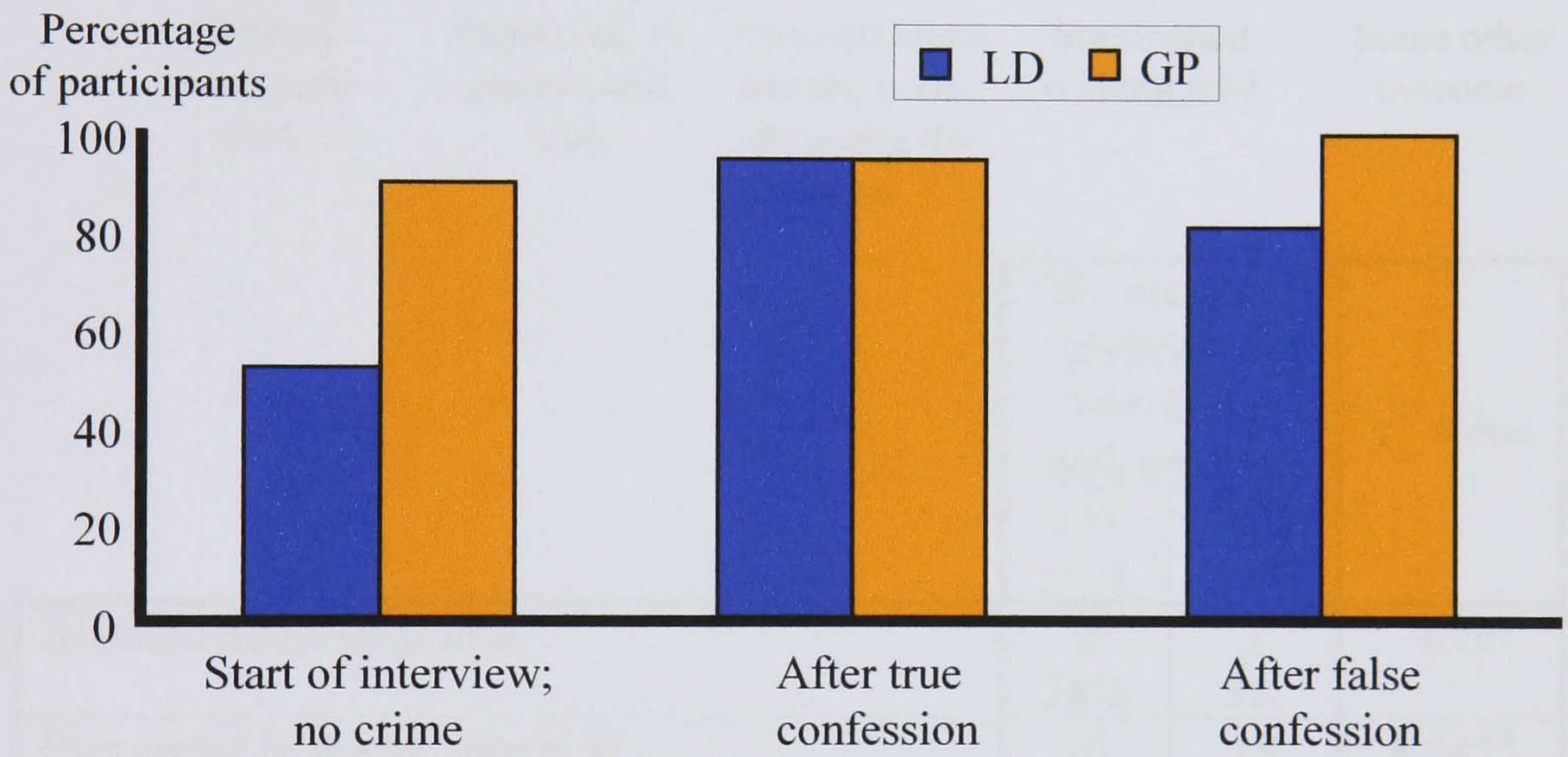
Figure 4.3.1 also shows the proportions of participants in the LD and GP groups who thought that the suspect should seek legal advice after, first, making a true confession to

the burglary, and, then, a false confession to killing the householder. Whilst there were no statistically significant differences between the two groups, the pattern of responses differed slightly. There was a very small increase in the percentage of GP participants who perceived the need for legal advice after the suspect had confessed to killing the householder, but there was a small *decrease* among the LD group.

Three participants with learning disabilities who reported that the suspect should have legal advice after the true confession changed their minds. Unfortunately, only one of the three could give an account of his response. He explained that:

> 'he doesn't need a solicitor because he's making it all up about the killing'.

Figure 4.3.1 Perceived need for legal advice for the suspect at different stages of the police interview



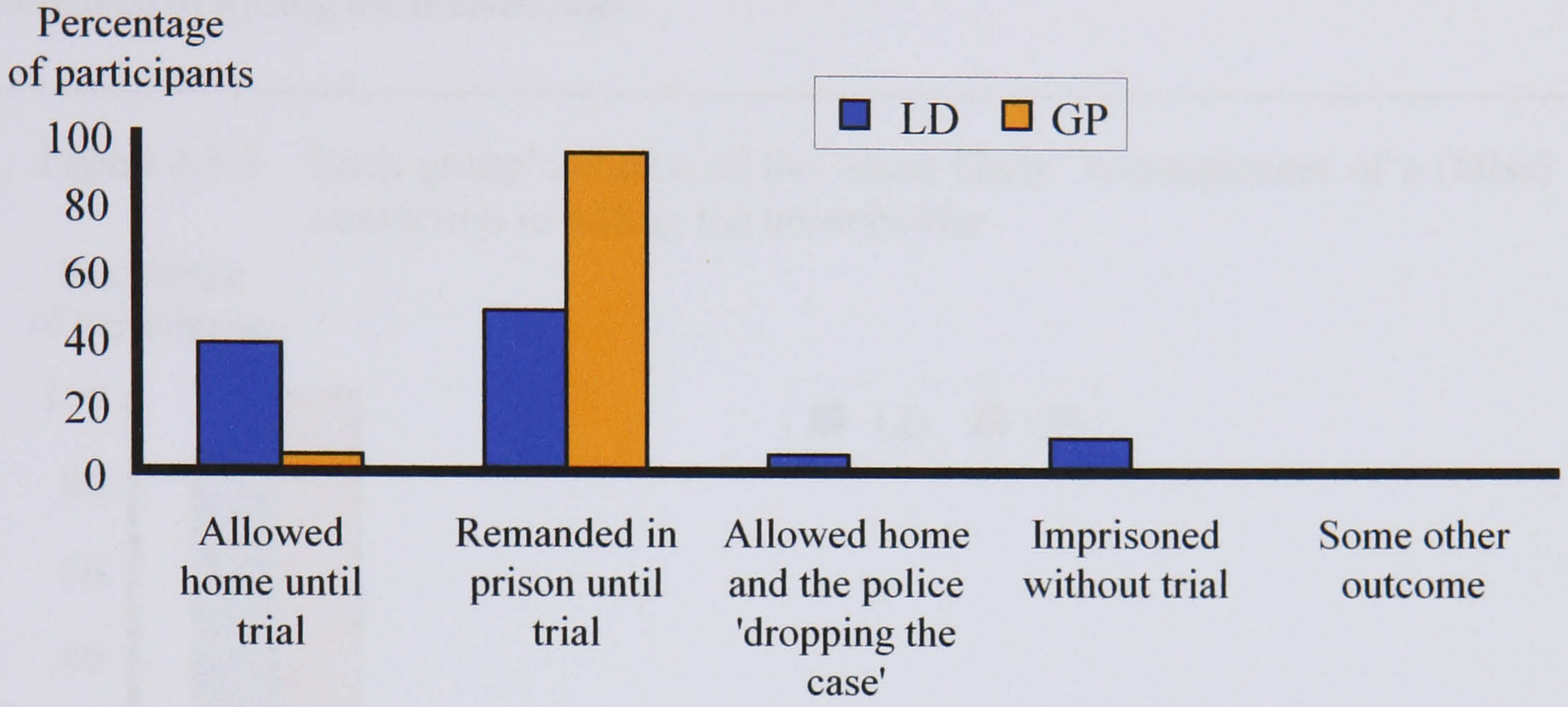
No. and % of participants who chose each outcome			χ^2 value
	LD n=21	GP n=20	
Start of interview: no crime	11 52%	18 90%	5.30 *
After true confession	20 95%	19 95%	n.s.
After false confession	17 81%	20 100%	2.34 n.s.

n.s. not significant; * $p<0.05$ (1-tailed, df = 1)

Perceived consequences of confessing to a serious crime

Figure 4.3.2 shows the percentage of participants in each group who selected each of the possible outcomes as the 'most likely' consequence of the suspect's (false) confession to killing the householder.

Figure 4.3.2 Each group's choice of the 'most likely' consequence of maintaining a (false) confession to killing the householder



	No. and % of participants who chose each outcome		χ^2 value
	LD n=21	GP n=20	
Allowed home until trial	8 38%	1 5%	4.76*
Remanded in prison until trial	10 48%	19 95%	8.94**
Allowed home and the police 'dropping the case'	1 5%	0 0%	n.s.
Imprisoned without trial	2 10%	0 0%	n.s.
Some other outcome	0 0%	0 0%	n.s.

n.s. not significant; * $p<0.05$; ** $p<0.01$ (1-tailed, df = 1)

Responses were compared statistically using the Chi-square test (see Appendix 7 for details). Importantly, as expected from the general hypothesis, significantly fewer of the LD group thought the suspect would be remanded in prison. Conversely, significantly more of this group thought that, though that the suspect would have to appear in court at a

later date, he would be allowed home in the intervening period; more than one third (38%) expressed this view.

What of the consequences of maintaining the confession and subsequently being convicted? Figure 4.3.3 shows the percentage of participants in each group who selected each of the outcomes as the 'most likely' consequence for the suspect of being (falsely) convicted of killing the householder.

Figure 4.3.3 Each group's choice of the 'most likely' consequences of a (false) conviction to killing the householder

	No. and % of participants who chose each outcome		χ^2 value
	LD n=21	GP n=20	
Sent to prison	18 86%	20 100%	1.33 n.s.
Fined	1 5%	0 0%	n.s.
Sent to hospital	2 10%	0 0%	n.s.
Allowed home	0 0%	0 0%	n.s.
Some other outcome	0 0%	0 0%	n.s.

n.s. not significant (1-tailed, df = 1)

Contrary to expectations, almost all the participants with learning disabilities thought it most likely that, if convicted by a court, the suspect in the interview would be sent to

prison. With one exception, the remaining participants chose 'being sent to hospital', a possibility which is realistic for people with learning disabilities (under Part III the *Mental Health Act 1983*), and demonstrates awareness that a conviction for such a serious offence would have major implications for the person's life.

Perceived consequences of a false confession

First, the likely response to a retraction of the false confession was examined. Table 4.3.3 shows the number of participants in each group who perceived that the police officer would believe the suspect if he immediately retracted his confession.

Table 4.3.3 Perceived response to immediate retraction of a false confession

	No. and % of participants choosing each response		χ^2 value
	LD n=21	GP n=20	
Unsure	2 10%	3 15%	0.29 n.s.
Police officer would believe retraction	5 24%	1 5%	2.90 n.s.

n.s. not significant

In each group, similar proportions expressed uncertainty about the response. However, whilst the difference was not statistically significant, the LD group, as expected, were more likely than their counterparts in the general population to think that the suspect's retraction would be believed by the interviewing officer (LD group: 24%; GP group: 5%).

Of the four participants with learning disabilities who were able to explain why they thought the retraction would be believed, two suggested that the police officer would not have been convinced by the initial confession; the remaining two indicated that it would be convincing because it reflected what had actually happened, that is, that the suspect 'didn't do it'.

Secondly, the likelihood was examined of the court being convinced by a false confession which was maintained. Again, similar proportions of each group reported that they were uncertain whether or not the suspect would be found guilty if he stated his false confession

in court (LD group: 19%; GP group: 20%). The most frequent explanation of this response was that the outcome would depend on the strength of the other evidence against him. However, though the difference was not statistically significant, as expected more of the participants in the 'learning disabilities' group (29%) than of their 'general population' counterparts (10%) reported that the court would acquit him.

Of the six participants with learning disabilities who believed that the court would not be convinced by the suspect's false confession, only one person's explanation (that the suspect was clearly a liar because he had denied and then admitted the burglary during the audio-taped interview) drew on evidence which might be available during a trial. The other participants implied that the court had access to special knowledge, stating, for example, that:

'the court would see in his face';

'the court would know' ;

'they (the court) would know (he) had got confused and said something that came out wrong'.

4.3.4 DISCUSSION

Unexpectedly, the participants with learning disabilities recognised as well as their 'general population' peers that a suspect who was guilty of a crime, and had made a confession to the police, might benefit from legal advice, and that a custodial sentence would be the most likely consequence of a conviction for a serious offence. Nevertheless, consistent with the hypothesis underlying the study (Jenkinson and Nelms, 1994; Morris et al., 1993), the findings suggested that men and women with learning disabilities were much more sanguine about the significance and consequences of making a confession to a serious offence. Compared with their 'general population' counterparts, they were less likely to believe that a suspect who maintained he had killed someone in the course of a burglary would be remanded in prison until his trial; conversely, they were more likely to think he would be allowed home. In addition, consistent with the suggestion from previous studies (Jenkinson and Nelms, 1994; Morris et al., 1993) that people with learning disabilities may not see themselves as autonomous adults, they were at somewhat increased risk both of thinking that the suspect would be believed if he retracted a false

confession later in the interview and, incredibly, that it would not be perceived as evidence of guilt even if he repeated it in court.

The perceptions of the participants with learning disabilities were held in the context of very limited understanding of the caution and the right to legal advice. As expected (see Ch. 3), they were less likely than their peers to comprehend the pre-1995 version of the caution. Strikingly, however, less than one-quarter even demonstrated knowledge of this material. Similarly, whilst, unexpectedly, their understanding of legal advice did not differ from that of their peers, only two-thirds could recall any information, even in the most general terms, about its benefits. Arguably, people do not need to know or understand this material if they comprehend its practical importance in minimizing the risk of self-incriminating admissions (Baldwin, 1992; Leng, 1993; McConville and Hodgson, 1993; Moston et al., 1992; Pearse and Gudjonsson, 1997; Pearse et al., 1998) and seek to exercise this right at the earliest possible opportunity. Unfortunately, only half (52%) of the participants with learning disabilities thought legal advice was needed from the start of the interview, even if the suspect was innocent of the crime about which he (in this case) was being questioned. Worryingly, only four out of five (81%) thought this necessary after a false confession to a very serious offence.

Despite the encouraging findings from the previous study (see Ch. 4.2), the methodology remained flawed. Reflecting their misperceptions of the nature of police interviews, only half the experimental participants believed the film to be realistic. More importantly, perhaps, only a small minority felt so emotionally involved that they asked what happened to the suspect after the end of the interview. Moreover, though it may affect decision-making (Jenkinson and Nelms, 1994), for ethical reasons there was no sense for participants of *personal* threat. Arguably, then, this study shared the short-comings of other investigations involving hypothetical, rather than real-life, legally-significant decision-making (Jenkinson and Nelms, 1994; Morris et al., 1993; cf. Arscott et al., 1998; Grisso et al., 1995, Wong et al., 2000).

The interview schedule was also limited. Despite simplification during piloting, it remained complex. With hindsight, more attention should have been given to the possibility of simplifying the items and their presentation by using pictorial material (see Jenkinson and Nelms, 1994), such as, for example, some of the illustrations from the

books for suspects and defendants with learning disabilities (Hollins, Clare, Murphy and Webb, 1996; Hollins, Murphy, Clare and Webb, 1996; see Ch. 7). On some occasions, participants needed considerable assistance to clarify their responses. Unfortunately, however, no audio-tapes were made so that it was not possible to carry out any analysis of the extent to which the responses may have reflected the interviewer's expectations (c.f. Clare and Murphy, 1993).

Still, the findings suggested that the perceptions of police interviewing and its consequences among people with learning disabilities may differ from those of their 'general population' counterparts so that they would be disadvantaged in protecting themselves from making self-incriminating statements.

4.4 GENERAL DISCUSSION

In this chapter, a methodology was developed and used in an exploratory investigation of Gudjonsson's (1992a, 1993, 1994, 1999) suggestion that impaired decision-making is one of the 'psychological vulnerabilities' of people with mild learning disabilities during police detention and interviewing.

From other experimental studies (Bray et al., 1994a; Bray et al., 1994; Ferretti, 1994; Ferretti and Cavalier, 1991; Jenkinson and Nelms, 1994; Morris et al., 1993; Wong et al., 2000), it appears that the disadvantages in decision-making which people with learning disabilities experience reflect a wide range of factors; the study described here has focussed on just one. Its findings suggest that men and women with learning disabilities perceive a police interview and its implications differently from their 'general population' counterparts. Perhaps because of the methodological limitations of the interview schedule, some of the participants with learning disabilities were unable to explain their responses. From those who were able to give an account, however, it seemed that their perceptions were most influenced by whether or not the suspect had *actually* committed the alleged offence. Indeed, it seemed that they thought that the suspect's actual guilt or innocence would be evident to other people, with the implication that, if he were innocent, he would be protected from the impact of his own admissions. How might these findings be explained?

There are at least two, overlapping, possibilities. The first reflects the impairments of intellectual and social functioning which form part of the definition of a 'learning disability'. The assumption that the truth about the suspect's (lack of) involvement in the house-holder's death would be self-evident to another person suggests that some participants had difficulties reasoning about others' mental states, that is, they had an impaired 'theory of mind' (Baron-Cohen, Leslie and Frith, 1985; see Baron-Cohen, Tager-Flusberg and Cohen, 2000). It used to be thought that impairments in the development of a 'theory of mind' (ToM) are only found among people with autistic spectrum disorders (Astington, 1993); clinically, none of the participants appeared to be a person with this condition. However, several experimental studies have now suggested that performance on ToM tasks is often more limited among people with learning disabilities than other individuals of similar 'mental age' (Benson, Abbeduto, Short, Bibbler Nuccio, and Maas, 1993; Sodian and Frith, 1992; Yirmiya, Solomonica-Levi, Shulman, and Pilowsky, 1996). Whilst there are methodological problems which have not yet been resolved (Charman and Campbell, 1997), these studies point to the importance of non-cognitive factors, such as the limited opportunities for social interaction available to people with learning disabilities in childhood and beyond (Baumeister and Kupstas, 1990; Koscielak, 1996; Nunkoosing and John, 1997; Richardson, 1981); further investigation of the impact of these factors is needed.

The second possibility also involves non-cognitive factors. The 'learning disabilities' participants may have experienced the learned helplessness (Seligman, 1975; Abramson et al., 1978), which is apparently often observed among this population (Weisz, 1999), and is associated with inefficient decision-making strategies (Jenkinson, 1999; Morris et al., 1993), such as 'defensive avoidance' (Janis and Mann, 1977; see Jenkinson and Nelms, 1994). As a result, they may have viewed themselves as individuals with limited credibility, whose statements - whether truthful or not – are rarely taken seriously unless ratified by a more powerful person. From this perspective, the suspect's false confession would be of little significance: the consequences would depend on the evidence and decisions of 'competent' others who would somehow know the truth of the situation. Though this explanation is consistent with the participants' comments, it does not fit easily with the findings of experimental problem-solving tasks (Bray et al., 1994a, b; Ferretti, 1994) suggesting that people with learning disabilities actively attempt to devise strategies, albeit ones which are ineffective. Whether such inconsistencies are

simply a function of different methodologies and, in particular, the extent to which they reflect everyday life, or of the participants involved in different studies, is, at present, uncertain.

Unfortunately, despite continuing clinical and empirical interest in miscarriages of justice involving false self-incriminating admissions during police detention and interviewing (see Gudjonsson, 2001, 2003), the experimental approach reported in this chapter has not been replicated or developed to explore further the decision-making of people with mild learning disabilities. Admittedly, there are methodological problems that have to be resolved. First, an 'event' needs to be found which participants find realistic and involving but is ethically acceptable; this is no easy matter. Secondly, the theoretical basis of any measure designed to elicit participants' thinking or feeling should be coherent. It was intended that the items in the interview schedule should be based on Irving and Hilgendorf's (1980; Hilgendorf and Irving, 1981) proposal, based in theories of subjective utility maximization, that suspects' decision-making reflects their perception of the situation and its consequences. Some items appeared consistent with this model (for example, those relating to the perceived consequences of the suspect being convicted of killing the householder). Others, however, such as the questions about the relevance of legal advice at different points in the interview, did not. Instead, unintentionally, they elicited the participants' 'appreciation' of relevant information which, according to theoretical analyses (Appelbaum and Grisso, 1988, 1995; Grisso and Appelbaum, 1998; Law Commission, 1995; *re C (Adult: Refusal of Treatment) 1994*), is necessary for making valid legally-significant decisions. In designing any future experimental investigations, much more attention needs to be given to both the validity of the psychological measure used to assess participants (Anastasi and Urbina, 1997) and the theoretical framework in which the measure is based.

Meanwhile, until further empirical evidence becomes available, the uncomfortable implication of the findings is that, even when they understand the caution and the legal rights, people with mild learning disabilities are more likely than their counterparts in the general population to make decisions during police detention which do not serve to protect their rights (e.g. they would not ask for legal advice, would not remain silent) and may increase the possibility that they would provide information which was unreliable, misleading or self-incriminating. Moreover, consistent with the low level (38%, N=20) of correct answers by the participants with mild learning disabilities to one of the questions

about the caution and legal rights reported in Ch. 3 ('is it true that you only need a solicitor if you've done the crime you're being questioned about?, see qu. 3, Figure 3.3.1), the responses to the exploratory study described here suggest that individuals who are completely innocent of the offence for which they have been arrested may be most at risk.

In terms of minimising the likelihood that impaired decision-making may lead to miscarriages of justice, legal advice is probably of most practical value. Though Code C of the Codes of Practice would need to be revised, no legislative changes would be required to amend the 'special provision' under *PACE* so that vulnerable suspects could not be interviewed formally unless a solicitor or other legal representative, as well as an Appropriate Adult, were present. However, findings from within the Metropolitan Police Service (Medford, Gudjonsson and Pearse, 2000) indicate that support from an AA is provided to fewer than half (40%) of the adult suspects whose Custody Records contain evidence of vulnerability. Whilst training, particularly for Custody Officers, may be helpful in improving this situation, given the heterogeneity of the population of men and women with learning disabilities, any attempt to make safeguards for vulnerable suspects dependent on their identification by police officers is likely to be of limited value. An alternative, and much more controversial, strategy would be the introduction of mandatory legal advice for all suspects; as far as is known, though, this has never seriously been considered in England and Wales. Later in this thesis, the possibility of another approach, that of encouraging self-identification by 'vulnerable' suspects, including men and women with learning disabilities who have been detained by the police, is explored. Before considering this, and other practical suggestions, a third putative source of 'psychological vulnerability' is considered, that of increased susceptibility to acquiescence, suggestibility, confabulation and compliance.

CHAPTER 5

PERSONALITY CHARACTERISTICS IN THE CONTEXT OF POLICE DETENTION AND INTERVIEWING

The findings reported in the two previous chapters (Chs. 3 and 4) suggest that people with learning disabilities are more likely than their 'general population' peers to have 'psychological vulnerabilities' (Gudjonsson, 1992a, 1993, 1994, 1999) which increase the likelihood that, as suspects, they will inadvertently provide information which is misleading, unreliable or self-incriminating. First, they may have more limited knowledge and understanding of the information about the caution and legal rights presented in the *Notice to Detained Persons* (see Ch. 3). Secondly, because of impairments in their decision-making, it may be more difficult for them to use that information to safeguard their rights (see Ch. 4).

According to Gudjonsson's (1992a, 1993, 1994, 1999) framework, a third putative source of 'vulnerability' during police detention and interviewing arises from the increased susceptibility of people with learning disabilities to certain personality characteristics, or patterns of responding. The purpose of this chapter is to examine four characteristics - acquiescence, interrogative suggestibility, confabulation and compliance - which have been of legal and practical importance in analyses of disputed confessions (Gudjonsson, 2003).

5.1 BACKGROUND

5.1.1 PERSONALITY CHARACTERISTICS IN DECISION-MAKING

As discussed in previous chapters, theoretical analyses of the abilities involved in making valid legally-significant decisions suggest that is it not sufficient for individuals to understand relevant information; they must also be able to use it to reach a decision,

and communicate their choice (Appelbaum and Grisso, 1988, 1995; Grisso and Appelbaum, 1998; Law Commission, 1995; *Re C (Adult: Refusal of Treatment) 1994*). Whilst, the literature has focussed primarily on cognitive abilities, other factors may also be relevant, particularly in 'using' the information (see Chapter 4).

Though, so far, no research has been carried out with people with learning disabilities, there has been increasing recognition that, among their counterparts in the general population, decision-making ability may be affected by personality factors, including the pervasive psychological disturbance which defines, and is associated with, a diagnosis of 'personality disorder'. Recently, for example, the High Court ruled, *inter alia*, that Ian Brady, who was convicted for the so-called Moors Murders, was not able to make a valid decision to kill himself by refusing food. The court accepted the argument that Mr. Brady's ability to reason about, or weigh up, the information about the risks and benefits of food refusal was compromised by his paranoid personality disorder (*R. v Ashworth Hospital ex parte Brady 2000*). In a forensic context, the landmark case is that of Judith Ward. In 1974, during police detention and interviewing, Ms. Ward confessed to serious terrorist offences, including the M62 coach bombing in which twelve people were killed and, subsequently, she was convicted and sentenced to life imprisonment. However, in 1992, after hearing psychological and psychiatric evidence, the Court of Appeal quashed her conviction, ruling that, at the time of her confessions, she:

> 'was suffering from a personality disorder so severe and deep-rooted that no reliance could be placed on any statement of fact made by her' (*R. v. Ward* [1993] *96 Cr. App.Rep.*, p. 22).

Since then, personality disorder has been important in other successful appeals against convictions based on self-incriminating admissions or confessions, both, occasionally, in the U.S.A. (Gudjonsson, 1999), and, more frequently, in England and Wales (*R. v. MacKenzie 1993,* see Ch. 1.5; *R. v. O'Brien, Hall and Sherwood 2000*; *R. v. Fell 2001*; see Gudjonsson, 2003, for further details of all three cases). Still, as the English Court of Appeal emphasised in its judgment of Mr. Hall in *R. v. Hall*, 'personality disorder' is neither necessary nor sufficient for the exclusion of confession evidence; like other 'psychological vulnerabilities', its relevance to a particular case has to be demonstrated.

Even when a diagnosis of 'personality disorder' is not appropriate, however, individuals may have psychological characteristics which may, in certain circumstances,

compromise their ability to make decisions which minimise the likelihood of providing information to the police which is misleading, unreliable or inadvertently self-incriminating. Many such characteristics may be relevant, including:

- impulsivity, poor planning, and other indicators of dysexecutive functioning (Russell, 1997);
- high anxiety (Gudjonsson et al., 1993; Santilla, Alkiora, Ekholm and Niemi, 1999);
- low self-esteem (as in the case of Engin Raghip, see Ch. 2. 1.3; and Gudjonsson, 1992a, 2003);
- need for attention (see Gudjonsson, 2003, for discussion in relation to the false confession to murder of Andrew Evans, a man with 'memory distrust syndrome' which was, initially, misdiagnosed as psychogenic amnesia);
- susceptibility to questioning about private matters (as in the case of Iain Hay Gordon, who made a false confession to murder in the context of coercive questioning about his sexual interests; see Gudjonsson, 2003, for further discussion).

However, this chapter focusses only on the four characteristics which, to date, have been explored in most detail: acquiescence, suggestibility, and confabulation. For clarity, initially, each of these characteristics is examined separately.

5.2 ACQUIESCENCE

5.2.1 THE DEFINITION AND MEASUREMENT OF ACQUIESCENCE

Whilst it has sometimes been understood more broadly, as submissiveness (e.g. Rosen, Floor and Zistein, 1974), in recent years acquiescence has been defined predominantly as the tendency of individuals either to answer closed 'yes'/'no' questions affirmatively (by saying 'yes') regardless of their content (Cronbach, 1946), or to agree with 'true'/'false' statements (by saying 'true'; see, for example, Gudjonsson, 1990b; Gudjonsson et al., 2000; Winkler et al., 1982; but c.f. Finlay and Lyons, 2002). 'Nay-saying', or the tendency to respond 'no' or 'false', results in inconsistency but not acquiescence (Gudjonsson, 1992a). Inconsistency may be well be relevant to interviews with witnesses. However, since, so far, there is no evidence that it is of practical importance in relation to suspects, it will not be discussed further in this thesis.

During police detention and interviewing, acquiescence is potentially important in two ways. First, through a series of affirmative responses to questions, suspects may provide accounts which are unreliable, misleading, or self-incriminating. Consistent with this suggestion, Gudjonsson (1990b) found that a 'general population' group (N=63) who alleged that they had made false confessions during police interviews were more acquiescent than their counterparts of similar intellectual ability (N=22). Secondly, and very importantly given the number of people involved and its legal relevance, suspects may reply 'yes' unthinkingly to police officers' questions about whether they have understood the meaning of the caution and the other legal rights. Experimental evidence (Cooke and Philip, 1998; Fenner et al., 2002; Grisso, 1981; Shepherd et al., 1995; see Chapter 3) indicates that, at least in relation to the caution, the tendency to respond affirmatively to the question 'do you understand?' provides a misleading over-estimate of the extent of comprehension.

It has been proposed (Gudjonsson, 1986) that acquiescent responding occurs in response to the decrease in self-esteem generated in individuals by uncertainty. The uncertainty itself is created by a question or statement which has not been understood, either because it has not been attended to sufficiently (because, for example, of emotional or cognitive difficulties) or because it contains words, concepts or meanings which are too complex. In response, the individual attempts to answer in a way which both minimises the likelihood of challenge by others, with the possibility of further threats to his or her self-esteem, and is more easily incorporated into recollection, alleviating the subjective perception of uncertainty. Recently, based on a review of the literature, Finlay and Lyons (2002) have suggested that acquiescence may also occur as a 'default' response by men and women who comprehend what they are being asked about but are simply not sure how to answer. Alternatively, interviewees may not recognize that they have not understood the material fully and simply respond to it as they perceive it. Nevertheless, Finlay and Lyons (ibid.) conclude that Gudjonsson's (ibid.) account provides a 'powerful explanation' (ibid., p. 22) of acquiescence and his explanation remains very influential.

Subsequent analyses (Finlay and Lyons, 2002; Rapley and Antaki, 1996) have drawn particularly on Gudjonsson's (1986) suggestion that, consistent with the functional

approach of his concept of 'psychological vulnerabilities', the subjective feeling of uncertainty arises from three sources, all of which may interact:

(i) the characteristics of the specific interviewing situation;

(ii) the properties of the questions or statements to which an individual is asked to respond; and

(iii) the characteristics of the respondent.

The emphasis placed on each of these sources has differed. Rapley and Antaki (ibid.), for example, have examined the way in which acquiescence may arise in situations in which the interviewer holds much greater power than the person being interviewed. In contrast, Finlay and Lyons (ibid.) have drawn attention to the importance of a detailed examination of the material to which an individual is asked to respond.

From an 'individual differences' perspective, which focuses primarily on the characteristics of the respondents, acquiescence has been measured formally in a number of ways, using:

- a set of one or more nonsense items where 'no' is the correct response (Kishi, Teelucksingh, Zollers, Park-Lee and Meyer, 1988; Sigelman et al., 1981a);
- balanced scales, where half the items have been reworded to require a 'no' response (Ray and Lovejoy, 1983; Wehmeyer, 1994);
- item-reversal, with matched pairs of logically opposite questions or statements (Gudjonsson, 1986; Gudjonsson, Murphy and Clare, 2000; Sigelman et al., 1980; Sigelman et al., 1981a, b; Winkler, Kanouse and Ware, 1982).

Though item-reversals are difficult to devise (Block, 1965), Gudjonsson (1992a) proposes that they provide the best measure. Acquiescence is assessed by the number of *pairs* of items to which the individual responds by saying 'yes' or 'true'.

5.2.2 PREVIOUS STUDIES OF ACQUIESCENCE

From Gudjonsson's (1986) analysis, it would be expected that acquiescence would be related to factors which may increase respondents' uncertainty. Consistent with this suggestion, Winkler et al., (1982), using an adult North American sample (N=1351), and an attitude measure comprising twelve matched pairs of items, found a strong negative relationship between acquiescence and years of completed formal education. Acquiescence was also affected by (female) gender, (older) age, and (minority) ethnic

status. Similarly, Gudjonsson (1990b), using the same measure, found a significant negative correlation between acquiescence and Full Scale IQ on the WAIS-R (Wechsler, 1981). It might be expected, then, that because of the impairments which define their diagnosis and the social disadvantages which they often experience as a consequence, people with learning disabilities would be particularly susceptible to acquiescence.

Acquiescence among people with learning disabilities was first examined in detail in a series of studies by Sigelman and her colleagues (see review by Heal and Sigelman, 1995; Sigelman et al., 1980; Sigelman et al., 1981a, b) which have become 'a widely cited corpus' (Rapley and Antaki, 1996, p. 209). Each study used the same three samples of participants with learning disabilities: adolescents, aged 12-16 years, living in institutions or community placements, and adults (mean age c. 25 years), living in institutions. Each sample was sub-divided into three groups (IQ ranges: 25-39; 40-54; 55-69) based on the most recent assessment of intellectual ability in each person's case notes. In the first study, Sigelman et al. (1980) compared the two groups of adolescents (N=52, living in institutions; N=57, from community placements) and the adults (N=58), using one pair of logically inconsistent questions: 'Are you usually happy?' vs. 'Are you usually sad?'. These questions were inserted into a schedule about the participants' life experiences. Overall, acquiescence was very high, with about half the participants in each group (44.7% of the 42 adults who were able to respond) answering 'yes' to both questions. There was no effect of age or the participants' residential setting, but intellectual ability did have an impact: within each sample, the most intellectually able group was least acquiescent. A high rate of acquiescence was also found in two further studies (Sigelman et al., 1981a, b), both of which involved an additional pair of item-reversal questions ('Are you usually by yourself?' vs. 'Are you usually with other people?'). Again, acquiescent responding was most marked among the most severely intellectually disadvantaged group (Sigelman et al., 1981b), though only for the 'happy'/'sad' pair of items.

The findings of Sigelman and her colleagues (Sigelman et al., 1980, Sigelman et al., 1981a, b) have been widely cited as evidence of the susceptibility to acquiescence during interviewing of people with learning disabilities. Unfortunately, the studies on which the findings are based are methodologically problematic. First, the assessment of acquiescence, using, for the most part, only one or two pairs of item-reversal questions,

is very limited. Secondly, the validity of the allocation of the participants to groups according to their reported level of intellectual ability is uncertain. Not all the tests used were well-established (Sigelman et al., 1981a) and no information is provided about how recently they were been carried out.

Thirdly, the sample size of the adults with 'mild learning disabilities' was very small, comprising only seven or eight adults (no further details available, see Sigelman et al., 1980), all of whom were receiving institutional social care. Fourthly, the findings have not been supported by more recent studies. Neither Matikka and Vesala (1997) nor Gudjonsson et al. (2000) found that intellectual ability and acquiescence were related in participants identified administratively as men and women with learning disabilities. However, whilst Matikka and Vesala's (ibid.) study comprised a large sample (N=6161), intellectual ability was only crudely estimated from documents and staff views; the validity of the scores is, therefore, uncertain. In contrast, intellectual ability was assessed carefully by Gudjonsson and his colleagues (ibid., N=33), using the WAIS-R (Wechsler, 1981), but, perhaps because items on the test of acquiescence were deliberately devised to be 'simple' (ibid., p. 309), most of the participants obtained low scores. Finally, and of importance in the context of this thesis, none of these studies has involved a direct comparison between people with learning disabilities and their 'general population' counterparts.

5. 3 STUDY 6: SUSCEPTIBILITY TO ACQUIESCENCE

5.3.1 INTRODUCTION

Notwithstanding recent data (Gudjonsson et al., 2000; Mattika and Vesala, 1997), it is generally assumed, based on findings of studies involving participants in the general population (Gudjonsson, 1990b; Winkler et al., 1981) and a superficial reading of the work of Sigelman and her colleagues (Sigelman et al., 1980; Sigelman et al., 1981a, b), that people with learning disabilities are more likely than their peers in the general population to be susceptible to acquiescence. However, until a preliminary investigation was carried out (reported in Clare and Gudjonsson, 1993), this assumption had not been examined directly.

In their study, Clare and Gudjonsson (1993) used the matched-pairs measure devised by Winkler et al. (1982). This is well-standardised, and involves pairs of statements which have been successfully reversed (Finlay and Lyons, 2002). As expected (Gudjonsson, 1990b; Sigelman et al., 1980; Sigelman et al., 1981a, b; Winkler et al., 1981), the 'learning disabilities' group (N=20; mean Full Scale IQ: 65; s.d. 5.3) were significantly ($p \leq 0.01$) more acquiescent than their 'general population' peers (N= 21; mean Full Scale IQ: 99; s.d. 7.2). Unfortunately, none of the subsequent studies involve a direct comparison of people with learning disabilities and their counterparts in the general population. Given the concerns about the 'received wisdom' of acquiescence among men and women with learning disabilities (Finlay and Lyons, 2002; Rapley and Antaki, 1996), it seemed worthwhile, in the context of this thesis, to extend the data base of the preliminary study. In addition, given more recent findings (Gudjonsson et al., 2000; Matikka and Vesala, 1997), it seemed pertinent to examine the assumed relationship between acquiescence and intellectual functioning.

The aims of this study, then, were two-fold:

(i) to extend the findings of Clare and Gudjonsson's (1993) preliminary comparison of acquiescence among people with mild learning disabilities and their peers in the general population. It was expected that, compared with their 'general population' counterparts, the 'learning disabilities' group would be more acquiescent;

(ii) to explore the relationship between intellectual ability and acquiescence. It was expected that, within each group, acquiescence scores would be inversely correlated with intellectual ability.

5.3.2 METHOD

Participants

There were two groups of volunteer participants, drawn as convenience samples. All the participants were fluent in English:

Learning disabilities: the LD group comprised 35 men and 22 women. Twenty of these participants had already taken part in Study 1 (Ch. 3.2.2) and the preliminary investigation (Clare and Gudjonsson, 1993); they were not retested. The additional

participants all fulfilled the criteria for inclusion (see Methodological Considerations, Ch. 2.4).

General population: the GP group comprised 37 men and 22 women. Twenty of these participants had already taken part in Study 1 (Ch. 3.2.2) and the preliminary investigation (Clare and Gudjonsson, 1993); they were not retested. To obtain a more representative sample of the general population, further participants were recruited through 'job-finder' and work-experience centres or basic skills clubs. Since many of them reported that they had attended schools for pupils with 'special' needs, their intellectual functioning was assessed.

Measures

1. *Intellectual functioning*: the majority (N=76) of the participants completed all eleven sub-tests of the WAIS-R (Wechsler, 1981). For practical reasons, the remaining 40 participants, who had already taken part in Study 1 (Chapter 3.2.2), completed only eight sub-tests (four verbal, and four non-verbal; see Ch. 3.2.2); their scores were used to prorate Full Scale IQ.

2. *Acquiescence*: The test devised by Winkler et al. (1982) was used. A copy is shown as Appendix 5. It comprises 24 'true'/'false' sentences relating to medication, physicians, and health care, which are arranged so that each of the first twelve items is logically opposite to each of the remaining items (i.e. there is a contradiction between sentences 1 and 13, 2 and 14, and so on). Following the conventional scoring (ibid., p. 557), one point was allocated on each occasion on which a participant stated 'true' to both one of the first twelve items and its logical opposite. Acquiescence scores can range from 0-12, with a higher score indicating increased acquiescence.

Procedure and scoring

Participants were seen individually, in a quiet room, at their place of work or centre/club, or at day-services or residential placements for people with learning disabilities. The forty participants involved in the preliminary study were assessed by me. The remaining seventy-six participants were recruited and assessed by Ms. Philippa Cross, the Research Assistant who was funded by the Royal Commission on Criminal Justice and trained by me in the administration of the tests (see Study 2, Ch. 3.3). The

same procedure was used for all the participants. First, each person completed the assessment of intellectual functioning. Then, the test of acquiescence was presented. Participants were encouraged to follow the text whilst each item was read out in turn. Both measures were scored entirely by me.

5.3.3 RESULTS

Participant characteristics

Table 5.3.1 shows the chronological ages and Full Scale IQ scores of the two groups. The mean scores were compared statistically by calculating *t* values. The test values are shown in the last column (see Appendix 7 for details).

Table 5.3.1 Characteristics of the 'Learning disabilities' and 'General population' groups

	Learning disabilities			General population			*t*-value
	mean	s. d.	range	mean	s. d.	range	
Chronological age	30.8	9.2	17-64	34.2	10.6	20-69	$t = 1.83$ n.s.
Full Scale IQ	66.1	5.5	53-75	96.4	12.2	80-128	$t = 17.26$ *
No. of participants	57			59			

n.s. not significant (*t*-test for independent samples with equal variances, 2-tailed, df =114)

* significant at $p<0.001$ (*t*-test for independent samples with unequal variances, 1-tailed, df =113)

Whilst the mean chronological ages of the two groups did not differ significantly, as expected the mean Full Scale IQ score of the 'learning disabilities' (LD) group was significantly lower than that of the 'general population' (GP) group.

Two analyses were then carried out.

Comparison of the acquiescence scores

Table 5.3.2 shows the mean scores, standard deviations, and ranges of the acquiescence scores of the two groups.

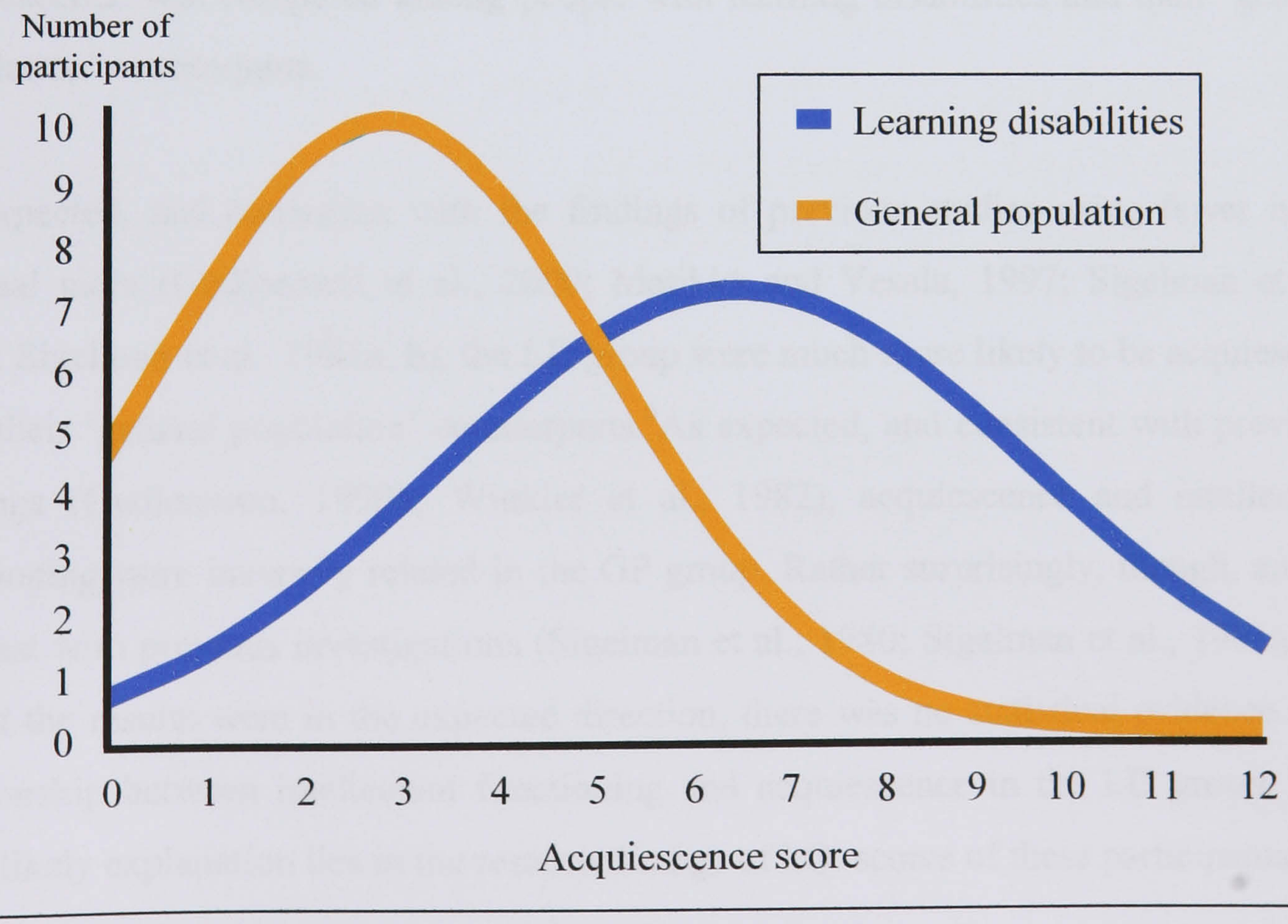
Table 5.3.2 Acquiescence scores for the two groups

	Learning disabilities			General population			Test value
	mean	s. d.	range	mean	s. d.	range	
Acquiescence test	6.5	3.1	0 -12	2.9	2.3	0 –12	$U = 548$ *
No. of participants	57			59			

* significant at $p<0.01$ (Mann-Whitney U test, 1-tailed)

Since the acquiescence scores did not approximate to the Normal distribution, the medians were compared statistically by calculating Mann-Whitney's *U* (see Appendix 7 for details). As expected, the participants with learning disabilities were significantly more acquiescent. However, as Figure 5.3.1 shows, there was an overlap between the scores of the two groups.

Figure 5.3.1 Distribution of acquiescence scores among the 'Learning disabilities' and 'General population' groups



Relationships between acquiescence and intellectual functioning

The correlations between the acquiescence and Full Scale I.Q. scores were calculated for each group separately. For the LD group, the Pearson product-moment correlation coefficient was calculated (see Appendix 7 for details). Unexpectedly, acquiescence and intellectual functioning did not correlate significantly ($r = -0.08$, 1-tailed). Similar analyses were carried out to examine the relationships between acquiescence and Verbal I.Q. and Performance I.Q. separately: again, no significant correlations were found. Since the data for the GP group did not approximate to the Normal distribution, Spearman's Rank-Order Correlation Coefficient was used (see Appendix 7 for details). Among these participants there was a significant negative correlation between acquiescence and Full Scale I.Q. scores ($\rho = -0.43$; $p<0.001$, 1-tailed), and both Verbal I.Q. ($\rho = -0.37$; $p<0.01$, 1-tailed) and Performance I.Q. ($\rho = -0.32$; $p<0.01$, 1-tailed).

5.3.4 DISCUSSION

Extending the preliminary investigation carried out by Clare and Gudjonsson (1993), acquiescence was compared among people with learning disabilities and their 'general population' counterparts.

As expected, and consistent with the findings of previous studies using fewer item-reversal pairs (Gudjonsson et al., 2000; Matikka and Vesala, 1997; Sigelman et al., 1980; Sigelman et al., 1981a, b), the LD group were much more likely to be acquiescent than their 'general population' counterparts. As expected, and consistent with previous findings (Gudjonsson, 1990b; Winkler et al., 1982), acquiescence and intellectual functioning were inversely related in the GP group. Rather surprisingly, though, and in contrast with previous investigations (Sigelman et al., 1980; Sigelman et al., 1981a, b), whilst the results were in the expected direction, there was no statistical evidence of a relationship between intellectual functioning and acquiescence in the LD group. The most likely explanation lies in the restricted range of I.Q. scores of these participants.

The overlap between the scores of the LD group and their 'general population' counterparts demonstrates that assumptions about individuals based on their status as people with learning disabilities are unwarranted. Nevertheless, the findings of this

study appear to provide convincing support for Gudjonsson's (1992a, 1993, 1994, 1999) suggestion that acquiescence is a 'psychological vulnerability' for this population.

5.4 GENERAL DISCUSSION OF ACQUIESCENCE

The results of this study suggest that people with learning disabilities are more likely than their peers in the general population to be acquiescent because they agree with 'true'/'false' statements. These findings have practical implications for police detention and interviewing. The theoretical implications of the study, though, are limited. With hindsight, not enough attention was paid to the other sources – the specific situation and the properties of the material to which participants were asked to respond - which, according to Gudjonsson (1986), contribute to the feelings of uncertainty which underlie acquiescence. When the data were collected, the most satisfactory formal measure appeared to be that of Winkler et al. (1982). This is well-established (Gudjonsson, 1990b; Winkler et al., 1982) and, in contrast with other tests (for example, Sigelman et al., 1980; Sigelman et al., 1981a, b; Gudjonsson et al., 2000), comprises a large number of items, providing a range of scores. In accordance with the approach recommended by Gudjonsson (1992a), the material is arranged into matched pairs of logically opposite statements, using a successful (Finlay and Lyons, 2002) item-reversal method. Moreover, the range of scores (from 0-12) of the participants in the preliminary study (Clare and Gudjonsson, 1993) suggested that the measure could be used with people with learning disabilities.

However, more detailed analysis of the material suggests that the test devised by Winkler et al. (1992) has some limitations. Using the Flesch Formula (Flesch, 1948), the complexity of the twenty-four statements was analysed. The 'Reading Ease' is 66. 5 ('standard'; on a scale from 0 'very difficult' to 100 'very easy'), which translates (Ley, 1977) into a *crude estimate* that a Full Scale I.Q. score of 90 or more would be needed to understand the material fully. Looking at the measure in more detail, several of the items comprise long sentences (for example, item 19: 'When there is an important medical decision to make regarding any treatment, I want to be given enough information so that I can help make that decision'). This places a high level of demand on the working memory of participants with limited reading skills. In addition, some of the statements contain polysyllabic words (such as 'specific' (item 21); 'unnecessary'

(item 22)) and, on occasion, unusual constructions (for example, item 23: 'Doctors don't always explain to their patients the risks involved in certain treatments'). Moreover, as the findings of Sigelman et al. (1981b) suggested, the content of the material may be relevant. The statements devised by Winkler et al. (1982) relate to an area (health care) in which men and women with learning disabilities may have had few opportunities to make autonomous decisions (Morris et al., 1993; see Chapter 4.1.2). Such items may be associated with an increase in acquiescent responding. Certainly, when the item content is very familiar (as in the material of the measure devised by Gudjonsson et al., 2000), acquiescence may be minimal.

This analysis suggests that the experimental situation may not have been experienced in the same way by the participants with learning disabilities and their 'general population' counterparts. Objectively, it appears that the 'learning disabilities' group were at greater risk of uncertainty. Whether or not, though, they were more likely to experience the *subjective* feelings of uncertainty which, according to Gudjonsson (1986), are crucial to acquiescent responding, is unclear. As Finlay and Lyons (2002) have pointed out, and is supported by the empirical findings relating to the caution (Cooke and Philip, 1998; Fenner et al., 2002; Gudjonsson, 1992a; Shepherd et al., 1995), problems in understanding the material are not necessarily recognised by respondents. Unfortunately, no attempt was made to investigate this possibility. However, the range of scores of the 'learning disabilities' participants indicates that not all of them were aware of their (putatively) limited comprehension of the test. This suggests that Gudjonsson's (1986) account of acquiescence needs to be explored further.

Nevertheless, and notwithstanding the overlap between their scores and those of their 'general population' counterparts, the increased risk of acquiescence, even within an experimental situation, among people with learning disabilities indicates that practical measures for minimising this 'psychological vulnerability' should be adopted. These suggestions are considered at the end of the chapter. First, however, the possibility that men and women with learning disabilities are at greater risk than their peers in the general population of other personality characteristics which may increase the likelihood that, as suspects, they will inadvertently provide misleading, unreliable or self-incriminating information during police detention and interviewing is examined.

5.5 INTERROGATIVE SUGGESTIBILITY

5.5.1 THE DEFINITION AND MEASUREMENT OF INTERROGATIVE SUGGESTIBILITY

In the context of police detention and interviewing, the personality characteristic which has been explored in most detail is that of interrogative suggestibility. This is, arguably (Gudjonsson, 1987, 1992a; Register and Kihlstrom, 1988; but c.f. Linton and Sheehan, 1994), a distinct form of suggestibility which relates to the extent to which factors associated with interviewing may impact on an individual's encoding, storage, retrieval and/or reporting of events (Milne and Bull, 1999).

Though interrogative suggestibility (hereafter, suggestibility) has been explored from different perspectives (Milne and Bull, 1999; Schooler and Loftus, 1986), the most influential approach, in relation to the information provided by suspects, has been that of Gudjonsson (1984 et seq.) and his colleagues. According to the model devised by Gudjonsson and Clark (1986), suggestibility is defined as:

> 'the extent to which, within a closed social interaction, people come to *accept* (my italics) messages communicated during formal questioning, as a result of which their behavioural response is affected' (Gudjonsson and Clark, 1986, p. 84),

and reflects an individual's ability to devise and implement effective cognitive and behavioural strategies to cope with the demands of being interviewed.

The potential importance of suggestibility during police detention and interviewing is supported by two types of evidence. First, analyses of both proven false confessions (Gudjonsson and MacKeith, 1990; Santilla et al., 1999) and successful appeals against conviction (David MacKenzie (*R. v. MacKenzie 1993*; see Ch.1.5); Engin Raghip (*R.v. Silcott, Braithwaite and Raghip 1991*; see Ch. 2.3.1); Judith Ward (*R. v. Ward 1993*; see Ch.5.1.1)) have shown that many of those involved were unusually suggestible (see Gudjonsson, 2003). Secondly, empirical studies of people charged with criminal offences who allege they made false confessions during police interviewing ('false confessors') have indicated that they are more suggestible than either their counterparts who maintain their confessions (Gudjonsson, 1992a) or 'resisters' who, despite adverse forensic evidence, deny their involvement (Gudjonsson, 1991b, 1992a). Similarly, in a

survey of convicted adult prisoners in Iceland who were self-reported 'false confessors', Sigurdsson and Gudjonsson (1996b) found that, compared with their peers (N=48), those who reported that they had, at some point, believed in their admission were more suggestible.

Gudjonsson and Clark (1986) propose that an individual's suggestibility comprises two distinct aspects:

(i) a tendency to be (mis)led by leading questions; and

(ii) a tendency to change initial responses following negative feedback (see Gudjonsson, 1992a, for a full review).

During police interviewing, the presentation of (mis)leading or false alternative questions creates feelings of *uncertainty* in suspects as they struggle to know how to answer correctly. This uncertainty can be alleviated by accepting the premises contained in the questions and responding as if the question were straightforward. It is much more likely that suspects will adopt this strategy if, first, they have *interpersonal trust* in the interviewing officer, and are not suspicious or hostile (Gudjonsson, 1989b), and secondly have an *expectation* that they *should* be able to answer correctly, rather than simply admit that they 'don't know' (Boon and Baxter, 2000; Gudjonsson and Hilton, 1989; Hansdottir, Thorsteinsson, Kristinsdottir and Ragnarsson, 1990). However, their initial responses may be not be accepted by the police and may, instead, be challenged through *negative feedback*. Then, often, the questions will be repeated. This process of repeated questioning, particularly if it is accompanied by critical feedback (Boon and Baxter, 2000; Tata and Gudjonsson, 1990) may also influence suspects to accept what they believe is being communicated by the interviewer.

The implication of Gudjonsson and Clark's (1986) model is that suggestibility may be influenced by a range of 'individual differences' which affect interviewees' feelings of uncertainty, interpersonal trust, and expectations, and their responses to negative feedback. Consistent with this model, it has been found that suggestibility is affected by individual characteristics including:

- demographic factors, such as age (adolescence vs. adulthood: Richardson, Gudjonsson and Kelly, 1995; Singh and Gudjonsson, 1992; Warren, Hulse-Trotter and Tubbs, 1991);

- life experiences, including the number of previous convictions (Sharrock and Gudjonsson, 1993);
- cognitive factors such as intellectual disadvantage and memory impairments (Gudjonsson, 1983; Gudjonsson and Clare, 1995; Sharrock and Gudjonsson, 1993), though both are subject to range effects (Gudjonsson, 1988a);
- substance misuse (Gudjonsson, 2003; Murakami et al., 1996);
- affective factors including lack of assertiveness (Gudjonsson, 1988b); low self-esteem (Gudjonsson and Singh, 1984); state (Gudjonsson, 1988b) and trait (Gudjonsson, Rutter and Clare, 1995) anxiety; enhanced fear of negative evaluation (Gudjonsson, 1988b); suspiciousness and anger (Gudjonsson, 1989b); style of coping with demands (Gudjonsson, 1988b); feelings of powerlessness (in men, Gudjonsson and Lister, 1984).

These different factors may not affect the two aspects of suggestibility in the same way. Gudjonsson (1988a, 1992a) proposes that cognitive factors, particularly memory, mainly affect the tendency to 'give in' to 'leading questions'; in contrast, responses to 'interrogative pressure' primarily reflect affective factors.

Despite their 'individual difference' perspective on suggestibility, Gudjonsson and Clark (1986) do not reject the importance of other factors. Indeed, consistent with the functional approach of his concept of 'psychological vulnerabilities', Gudjonsson (1992a) proposes that, like acquiescence (see Ch. 5.2.1), suggestibility arises in the context of three sources, all of which may interact:

(i) the characteristics of the individual interviewee;

(ii) the specific interaction, including the other participants; and

(iii) the properties of the questions or statements to which an individual is asked to respond.

The extent to which each of these sources has been emphasised by different investigators has varied. Whilst Gudjonsson (1984 et seq.) has been concerned *primarily* with the characteristics of individual interviewees and their interactions with different situations, others have focussed more on the questions asked, examining the:

- impact of the wording (Milne, Bull, Kohnken and Memon, 1995; Milne and Bull, 1999);
- modality and other aspects of the presentation (Beail, 2002; Cardone and Dent, 1996; Milne, Clare and Bull, 2002; Schooler and Loftus, 1986); and the

- interactions between the material and the individual characteristics of interviewees (Gudjonsson and Gunn, 1982; Henry and Gudjonsson, 1999; Papierno, Hembrooke and Ceci, 1998).

At the same time, research in the 'experimental' tradition (Loftus, 1979; Schooler and Loftus, 1986), which, using mainly University students as participants, attempts to identify the cognitive psychological mechanisms underlying suggestibility, continues (see Milne and Bull, 1999, for further details). Nevertheless, it has been concluded that Gudjonsson and Clark's (ibid.) model is:

> 'a formidable attempt to make sense of a multi-faceted phenomenon' (Schooler and Loftus, 1986, p. 107).

The two putative aspects of suggestibility in Gudjonsson and Clark's (1986) model are measured formally using a behavioural test (Gudjonsson, 1997) presented during an interview. The Gudjonsson Suggestibility Scales, Forms 1 (GSS 1, Gudjonsson, 1984, 1997) and 2 (GSS 2, Gudjonsson, 1987, 1997) are interchangeable (Gudjonsson, 1997) and employ an identical format: a story is used to obtain measures of Immediate and Delayed free recall. Suggestibility is assessed through a set of standardized questions: five of these refer to material in the story and are inserted to conceal the purpose of the test. The remaining fifteen introduce material which is *not* mentioned. Though they are referred to collectively as 'leading questions' (Gudjonsson, 1997, p. 8), they are actually of three types: (i) 'leading' in that they either create an expectation of a certain type of answer; (ii) 'affirmative' in that they generate uncertainty; or (iii) present 'false alternatives'. The extent to which the person 'gives in' to these questions before, and then after, negative feedback is scored as 'Yield 1' and 'Yield 2', respectively. Any change in responding on any of the twenty questions following feedback constitutes a 'Shift'. Total Suggestibility comprises the sum of Yield 1 (the tendency to be (mis)led by leading questions) and Shift (the tendency to change initial responses following negative feedback). The scoring of the Scales is non-discretionary (Grisso, 1986), leading to high inter-rater reliability for both the GSS 1 (Richardson and Smith, 1993) and the GSS 2 (Clare, Gudjonsson, Rutter and Cross, 1994).

Since, at present, the GSS 1 and 2 provide the only standard measure of suggestibility (Beail, 2002), it is fortunate that the Scales of which they form the major part have been described, independently, as:

'the best examples of forensic assessment instruments that have been developed in the United Kingdom' (Cooke and Carlin, 1998, p. 62).

5.5.2 PREVIOUS STUDIES OF SUGGESTIBILITY

It would be expected that, because of the impaired intellectual and social functioning which defines the diagnosis, and their social disadvantage, people with learning disabilities would be at greater risk of suggestibility than their 'general population' peers. Surprisingly, though, whilst assertions about the suggestibility of people with learning disabilities have often been made (Craft, 1984; Ellis and Luckasson, 1995; Perske, 1994), this issue has rarely been examined experimentally.

In a pioneering study, Tully and Cahill (1984) asked participants to provide eye-witness accounts of a dramatic staged incident involving damage to some plants. Total memory (Immediate and Delayed Recall combined) and Total Suggestibility scores on the GSS 1 were compared among two groups (N=15, in each) of people with learning disabilities attending special day facilities (Full Scale IQ scores: 67-90; 66-<50) with those of participants (N=15) recruited from a job-centre (Full Scale IQ scores: >90). Consistent with the findings from the general population (Gudjonsson, 1983, 1988a; Gudjonsson and Clare, 1995; Sharrock and Gudjonsson, 1993), suggestibility was negatively correlated with both intellectual functioning and memory.

Tully and Cahill's (1984) study provides useful preliminary data but it is methodologically problematic. First, since only Total Suggestibility scores are given, it is not possible to know whether the high scores of the 'learning disabilities' groups reflected susceptibility to leading questions, to interrogative pressure, or both. Secondly, the participants with learning disabilities were selected 'administratively', on the grounds that they were attending designated day-facilities. In fact, though, four of the fifteen participants in the 'more able' 'learning disabilities' group obtained overall IQ scores within the Average or Low Average ranges. Given the negative relationship between intellectual functioning and suggestibility (Gudjonsson, 1988b; Sharrock and Gudjonsson, 1993), it cannot be assumed that the scores of these participants are representative of those of people with learning disabilities. Thirdly, and relatedly, the validity of the assessments of intellectual ability is uncertain. Though the test scores

were apparently standardised so that they were equivalent to the Wechsler Adult Intelligence Scale – Revised (Tully and Cahill, 1984, p. 12), no details are given.

Whilst Tully and Cahill (1984) considered only Total Suggestibility, rather than each aspect separately, Perlman and her colleagues (Perlman, Ericson, Esses and Isaacs, 1994), in Canada, examined only the impact of misleading questions and statements; they did not look at interrogative pressure. Compared with their peers (N=30), most of whom were University students, participants attending designated 'learning disabilities' services (with IQ scores from 55-80; no further details given) recalled far less material about a film they had just seen and, during interviewing, were much more likely to 'yield'. Unfortunately, the 'learning disabilities' group is problematic: case notes were used to establish their intellectual functioning (as in the acquiescence studies of Sigelman et al., 1980; Sigelman et al., 1981a, b) so, again, the validity of the assessments is uncertain. Moreover, the range of scores indicates that at least one participant was of Low Average ability.

Everington and Fulero (1999), however, examined both aspects of suggestibility, using an Americanised and abbreviated version of the GSS 1 with convicted offenders serving Probation Orders. Compared with their 'general population' counterparts (N=30; presumed to be of 'average' intellectual ability), the participants with learning disabilities (N=18; mean Full Scale IQ score for fifteen participants: 68; range: 59-75; no further details available) recalled less of the story, and were then significantly more suggestible: they were more likely to be misled by the leading questions and, like young people (Richardson et al., 1995; Warren et al., 1991), they were much more likely to change their initial responses following negative feedback.

Unfortunately, the data provided by Everington and Fulero (1999) about intellectual ability are again unsatisfactory and the rationale for amending, rather than simply translating, the GSS 1 is uncertain. Moreover, their findings have not been supported. Cardone and Dent (1996) and Milne, Clare and Bull (2002) both found that whilst, compared with the 'general population' counterparts, people with mild learning disabilities were more suggestible, in both studies this was due to their increased susceptibility to leading questions; they were not more likely than their peers to change their responses following the negative feedback. The finding that Shift is no more

marked in people with mild learning disabilities is, as Clare and Gudjonsson (1995) have pointed out, potentially important. Having been misled by the initial questions, this group of persons may simply repeat their first answers subsequently, giving an (incorrect) impression that it is safe to rely on what they have said. However, to complicate matters, both studies are methodologically limited: Cardone and Dent (ibid.) did not directly compare people with learning disabilities with their 'general population' peers, whilst the use by Milne et al. (ibid.) of a 'learning disabilities' sample identified administratively means that it is possible that not all their participants fulfilled the criteria for the diagnosis.

None of these studies then, involves a direct comparison of the suggestibility of people with learning disabilities and their 'general population' peers in which a) all the measures of an accepted test, such as the GSS, have been examined; and b) all the participants have had their intellectual functioning tested carefully.

5.6 STUDY 7: SUSCEPTIBILITY TO INTERROGATIVE SUGGESTIBILITY

5.6.1 INTRODUCTION

Consistent with Gudjonsson's (1992a, 1993, 1993, 1999) suggestion, it seems that, compared with their counterparts in the general population, people with mild learning disabilities are more likely to be susceptible to suggestibility (Cardone and Dent, 1996; Everington and Fulero, 1999; Milne et al., 2002; Perlman et al., 1994; Tully and Cahill, 1984). Moreover, it seems that the most intellectually disadvantaged men and women are most at risk (Gudjonsson, 1984, 1988b; Tully and Cahill, ibid.). However, though it is of potential importance (Clare and Gudjonsson, 1995), it is uncertain whether this susceptibility reflects only the impact of leading questions (Cardone and Dent, 1996; Milne et al., 2002) or, also, of interrogative pressure (Everington and Fulero, 1999).

In a preliminary study, Clare and Gudjonsson (first reported in Clare and Gudjonsson, 1993) compared the suggestibility of people with learning disabilities and their 'general population' peers, selected accorded to the criteria used throughout this thesis (see Methodological Considerations, Ch. 2.4.1). The GSS 2 (Gudjonsson, 1987, Gudjonsson, 1997), rather than the GSS 1, was used as the measure of suggestibility because, first,

though the two forms are interchangeable, analysis of the complexity of the two stories, using the Flesch Formula (Flesch, 1948), indicated that, whilst the GSS 1 has a 'Reading Ease' score of 64 ('standard'), the score for the GSS 2 is 75 ('fairly easy'). This suggests that it is more appropriate for people with learning disabilities. Secondly, the GSS 2 has higher internal consistencies for Yield 1, Yield 2 and Shift (Gudjonsson, 1992b), suggesting that it is more homogeneous (Anastasi and Urbina, 1997). Thirdly, the inter-rater reliability of the GSS 2 has been examined more thoroughly, using a larger number of raters and a more stringent measure of agreement (Clare et al., 1994).

As expected, it was found (Clare and Gudjonsson, 1993) that the 'learning disabilities' group (N=20; mean Full Scale IQ on the WAIS-R: 65; s.d.5.3) were significantly ($p \leq 0.01$) more suggestible than their 'general population' peers (N=20; mean Full Scale IQ: 99; s.d. 7.2). Again, as expected, they obtained lower memory scores and were more susceptible to leading questions, both initially and after the negative feedback ($p \leq 0.001$). However, their response to interrogative pressure was no different from that of their general population counterparts.

Given the debate about the response of people with mild learning disabilities to interrogative pressure (Cardone and Dent, 1996; Everington and Fulero, 1999; Milne et al., 2002), it seemed worthwhile, in the context of this thesis, to extend the data base of the preliminary investigation in order to address this issue. Further, since the issue has been neglected by more recent studies involving participants with learning disabilities, it also seemed pertinent to examine further Tully and Cahill's (1984) findings regarding the relationships between suggestibility, memory and intellectual ability.

The aims of the study, then, were two-fold:

(i) to extend the findings of Clare and Gudjonsson's (1993) preliminary study of suggestibility among people with mild learning disabilities and their peers in the general population. It was expected that compared with their 'general population' counterparts

- the 'learning disabilities' group would have poorer memories and be more suggestible; and
- would be more susceptible to Yield but not to Shift;

(ii) to explore the relationships between suggestibility, memory, and intellectual ability. Whilst it was expected that, within both groups, suggestibility would be negatively related to memory and intellectual functioning, it was believed that the relationships would be stronger in the LD group.

5.6.2 METHOD

Participants

There were two groups of volunteer participants, drawn as convenience samples. All the participants were fluent in English:

Learning disabilities: the LD group comprised the 35 men and 22 women who had taken part in Study 6 (Ch.5.3). Twenty of them had also participated in the preliminary study (Clare and Gudjonsson, 1993) and had also been involved in Study 1 (see Ch. 3.2); they were not retested.

General population: the GP group comprised the 37 men and 22 women who had taken part in Study 6 (see Ch. 5.3). Again, twenty of them had already participated in the preliminary study (Clare and Gudjonsson, 1993) and Study 1 (Ch. 3.2); they were not retested.

Measures

1. *Intellectual functioning*: the majority (N=76) of the participants completed all eleven sub-tests of the WAIS-R (Wechsler, 1981). For practical reasons, the participants who had first been involved in Study 1 completed only eight sub-tests (four verbal, and four non-verbal; see Ch. 3.2); their scores were used to prorate Full Scale IQ.

2. *Suggestibility*: the parallel form of the Gudjonsson Suggestibility Scale (GSS 2, Gudjonsson 1987, 1997) was used to assess responses to leading questions (Yield) and interrogative pressure (Shift). The GSS 2 comprises a fictitious story, which is read to participants, about a boy who is saved from having a bicycle accident. It is followed by two recall procedures and a set of specific questions which are asked both before and after negative feedback. The GSS 2 provides data on memory and suggestibility which, following Gudjonsson (1997), were scored as follows:

a) *Memory recall*: The participant's recall of the ideas in the story, immediately after it is read to him or her (*Immediate Recall* (IR)) and after a delay of about fifty minutes (*Delayed Recall* (DR)), is scored: a point is given for each distinct idea, with a half-point for each idea which is recalled incompletely. For each recall, the participant can obtain a maximum of 40 points.

b) *Suggestibility*:

- *Yield 1* (Y1) - Each of the fifteen leading questions which is answered affirmatively, or for which a false alternative is chosen, prior to the negative feedback, is scored. Scores on Yield l can range from 0-l5.
- *Yield 2* (Y2) - This is similar to Yield l, but it refers to the answers given after the negative feedback. It indicates whether the feedback makes the participants more or less susceptible to the leading questions. Again, scores on Yield 2 can range from 0-15.
- *Shift* (S) - A distinct change in response to any of the twenty questions following the negative feedback is scored. The range of possible Shift scores is therefore 0-20.

The range of possible scores for *Total Suggestibility* (TS, the sum of Yield l and Shift) is 0-35, with a high score indicating greater suggestibility.

Procedure and scoring

Participants were seen individually, in a quiet room, at their place of work or centre/club, or at day-services for people with learning disabilities. Again, I had assessed the forty participants involved in the preliminary study; the remaining seventy-six participants were recruited and assessed by Ms. Philippa Cross (see Study 2, Ch. 3; Study 6, Ch. 5.3). The same procedure was used for all the participants. First, each person completed the assessment of intellectual functioning. Then, the Gudjonsson Suggestibility Scale Form 2 (GSS 2, Gudjonsson, 1987, 1997) was presented in the normal way and scored according to the Manual (Gudjonsson, 1997). Since it had already been established that I was a reliable scorer (Clare et al., 1994), I scored all the data for this study.

5.6.3 RESULTS

The chronological ages and Full Scale IQ scores of the two groups are shown in Table 5.3.1 (Ch. 5.3.3.). As reported in the Results for Study 6 (see Ch. 5.3.3), the mean chronological ages of the two groups did not differ significantly. However, as expected the mean Full Scale IQ score of the 'learning disabilities' (LD) group was significantly lower than that of the 'general population' (GP) group.

Two analyses were then carried out.

Comparison of the suggestibility scores

Table 5.6.1 shows the mean scores, standard deviations, and ranges of the memory and suggestibility scores of the two groups.

Table 5.6.1 Suggestibility for the two groups

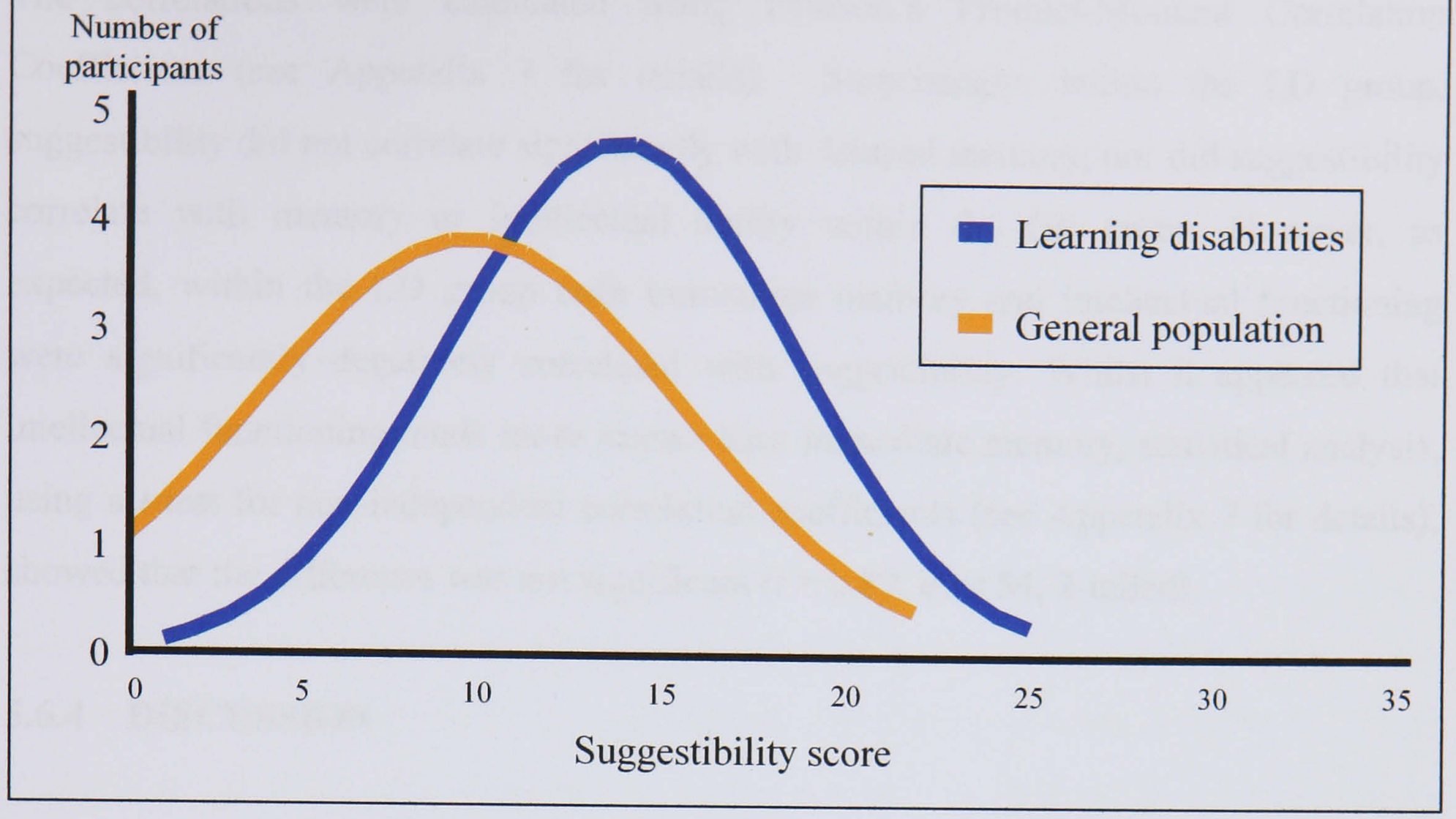
	Learning disabilities N = 57			General population N = 59			*t* value
	mean	s. d.	range	mean	s. d.	range	
Immediate recall (IR)	8.0	4.8	0 - 23	17.0	6.3	2 - 31	8.67*
Delayed recall (DR)	5.8	5.0	0 - 24	16.1	6.2	3 - 29	9.87*
Yield 1 (Y1)	9.8	3.7	0 - 15	6.1	3.6	0 - 12	5.44*
Yield 2 (Y2)	9.5	3.6	1 - 15	6.7	4.3	0 - 15	3.83*
Shift (S)	4.8	3.0	0 - 13	4.4	3.5	0 - 17	0.66 n.s.
Total suggestibility (TS)	14.6	4.7	1 - 25	10.5	5.8	0 - 22	4.15*

n.s. not significant (*t*-test for independent samples with equal variances, 2-tailed, df=114)

* sig. at $p<0.001$ (*t*-test for independent samples with equal variances, 1-tailed, df=114)

Statistical comparisons, using *t*-tests (see Appendix 7 for details), showed that the LD group recalled significantly fewer details of the story both immediately, and after a delay than the GP group. Though, as Figure 5.6.1 shows, there was an overlap between the Total Suggestibility scores of the GP and LD groups, nevertheless, as expected, the participants with learning disabilities were significantly more suggestible.

Figure 5.6.1 Distribution of Total Suggestibility scores among the 'Learning disabilities' and 'General population' groups



Moreover, again as expected, the difference in Total Suggestibility reflected the LD group's significantly greater susceptibility to 'leading questions' (Yield 1); there was no significant difference between the groups in their responses to 'negative feedback' (Shift).

Relationships between suggestibility, memory and intellectual functioning

Table 5.6.2 shows the correlations between Total Suggestibility, Immediate and Delayed Recall, and Full Scale IQ, for the LD and GP groups separately; since the differences between the groups for Yield 1 and Shift were so marked, for clarity they were excluded from this analysis.

Table 5.6.2 Correlations between intellectual ability, memory and suggestibility for the two groups

	Learning disabilities N=57	General population N=59
FSIQ and Total Suggestibility (TS)	-0.44**	-0.04 ^{ns}
Immediate recall and TS	-0.31*	-0.18 ^{ns}
Delayed recall and TS	-0.04 ^{ns}	-0.17 ^{ns}

^{ns} not significant

* significant at $p<0.01$ (*t*-test for the significance of Pearson's Product Moment Correlation Coefficient, 1-tailed)

** significant at $p<0.001$ (*t*-test for the significance of Pearson's Product Moment Correlation Coefficient, 1-tailed)

The correlations were calculated using Pearson's Product-Moment Correlation Coefficients (see Appendix 7 for details). Surprisingly, within the LD group, suggestibility did not correlate significantly with delayed memory; nor did suggestibility correlate with memory or intellectual ability within the GP group. However, as expected, within the LD group both immediate memory and intellectual functioning were significantly negatively correlated with suggestibility. Whilst it appeared that intellectual functioning made more impact than immediate memory, statistical analysis, using a *t*-test for non-independent correlation coefficients (see Appendix 7 for details), showed that the difference was not significant ($t = 0.89$, df = 54, 2-tailed).

5.6.4 DISCUSSION

Extending the preliminary investigation by Clare and Gudjonsson (1993), suggestibility was compared among people with learning disabilities and their 'general population' counterparts.

Consistent with the findings of previous studies (Cardone and Dent, 1996; Everington and Fulero, 1999; Milne et al., 2002; Tully and Cahill, 1984), the LD group had poorer memories for the material and were much more likely to be suggestible than their peers in the general population. This suggestibility reflected their susceptibility to the 'leading questions' from which Yield 1 is scored. In contrast, their response to the 'negative feedback' was no different from that of the control group. Whilst the possible impact of 'ceiling' effects on the GSS which limit the extent to which people who are very vulnerable to the initial questions can alter their responses to the feedback (Gudjonsson, 1990c) needs to be taken into account, nevertheless, the pattern of findings was consistent with those of both Cardone and Dent (ibid.) and Milne et al. (ibid.). The explanation of the apparent contradiction with the results obtained by Everington and Fulero (ibid.) may lie in the characteristics of the participants involved in the different investigations. In contrast with other studies involving people with learning disabilities, Everington and Fulero (ibid.) included a high proportion (55%, N=40) of African Americans. Whilst much more exploration is needed, empirical data from the U.K. (Gudjonsson et al., 1993; Gudjonsson et al., 1995) have suggested that there may be ethnic differences in suggestibility.

Though the results were all in the expected direction, rather surprisingly there was no statistical evidence of a relationship between suggestibility and memory or intellectual ability in the GP group. The most likely explanation lies in the 'range' effects identified by Gudjonsson (1988a): the mean Full Scale IQ score of the GP group was close to the 'cut-off' of 100 above which memory, and in particular, intellectual functioning, no longer seem relevant to suggestibility, at least as measured by the GSS 2. In contrast with this explanation, the absesnce of the expected relationships between suggestibility and delayed memory in the LD group is rather puzzling. Importantly, though, and consistent with the study by Tully and Cahill (1984), both immediate memory and intellectual functioning were significantly inversely related to suggestibility. The implication is that susceptibility to suggestibility would be most marked among the most cognitively disadvantaged participants because of their vulnerability to the 'leading questions'.

Again, as with acquiescence, the overlap between the scores of the LD group and their 'general population' counterparts demonstrates that assumptions about individuals based on their status as people with learning disabilities are unwarranted. Nevertheless, the findings provide convincing support for Gudjonsson's (1992a, 1993, 1994, 1999) indication that suggestibility is another 'psychological vulnerability' for people with learning disabilities.

5.7 GENERAL DISCUSSION OF SUGGESTIBILITY

Despite the overlap in the scores of the two groups, the findings indicated that, consistent with the results of other studies (Cardone and Dent, 1996; Milne et al., 2002; Tully and Cahill, 1984), people with learning disabilities are more likely to be suggestible than their 'general population' peers. Though they are no more likely than their 'general population' counterparts to change their responses following negative feedback, they are much more susceptible to 'leading' or 'affirmative' questions or questions which present 'false alternatives'. The results are of practical importance for police detention and interviewing (Clare and Gudjonsson, 1995). They indicate that is not necessarily safe to rely upon information which is repeated after negative feedback:

an individual may simply be restating an account which was 'shaped' earlier by questioning containing premises or expectations.

From a theoretical perspective, the findings are consistent with Gudjonsson's (1988a, 1992a) proposal that, among adults, the influence of memory impairments and intellectual disadvantage is primarily upon 'leading questions' (Yield). In terms of Gudjonsson and Clark's (1986) model, inadequate recall of the material may exacerbate feelings of uncertainty in the interviewee and trust in the integrity of his or her interviewer. However, they apparently fit less easily with Gudjonsson's suggestion (ibid.) that interrogative pressure mainly reflects social and personality factors. Given the impairments of social functioning which form part of the diagnosis, and the social disadvantage which is often experienced by people with learning disabilities, it might be expected that, like adolescents (Richardson et al., 1985; Singh and Gudjonsson, 1992; Warren et al., 1991), they would also find difficulties in coping with 'negative feedback' and would obtain high Shift scores. However, it is possible that the *subjective* experiences of the GSS of the two groups may not be similar. Children aged twelve years or more in the general population perform at the same level as their adult counterparts on the measures of recall and resistance to 'leading questions' (Ceci and Bruck, 1993). The 'negative feedback' may affect their confidence in a 'resistant' strategy and generate feelings of having disappointed or offended an authority figure. Seen in this light, the subsequent changes in responding may reflects adolescents' attempts to rectify a perceived interpersonal difficulty. In contrast, it is possible that, for people with learning disabilities, the feedback that they have 'failed' again merely triggers feelings of 'learned helplessness' (Weisz, 1999; and see Ch. 4.4) which are associated with inefficient decision-making strategies such as 'defensive avoidance' (Janis and Mann, 1977; see Jenkinson and Nelms, 1994); as a result, they simply repeat their initial responses. Alternatively, they may be so used to failure that the 'negative feedback' makes little impact. Unfortunately, no attempt was made to assess these possibilities.

Though the GSS is a well-established test (Cooke and Carlin, 1998), concerns have been raised about its validity (Baxter, 1990; Beail, 2002; Cardone and Dent, 1996). In contrast with the narrative passage in the GSS, which is presented in one (auditory) modality, crime-related incidents in everyday life normally involve several modalities

(usually visual and auditory but also; on occasion, others). Such multi-modal input may facilitate the encoding and recall of memory traces (Kosslyn and Koenig, 1992), resulting in more complete and accurate recall and as Gudjonsson (1988a, 1992a) has proposed, increase resistance to 'leading questions'. Moreover, the type of information which is presented (verbal, rather than visual) is precisely that which appears to be most difficult for people with mild learning disabilities (Martin et al., 2000). The implication is that the content of the GSS over-estimates suggestibility in men and women in this population. Certainly, it does appear that recall of the story can be improved and resistance to 'leading questions' enhanced by amending the presentation so that it is presented visually as well as verbally (Cardone and Dent, ibid.). Nevertheless, and importantly in the context of this thesis, in a preliminary study in which, to an attempt to improve its validity, the narrative passage in the GSS was replaced by a short filmed incident, it was *still* found that, compared with their peers in the general population, people with learning disabilities recalled fewer correct details and were more easily misled by the 'leading questions' (Milne et al., 2002). Whilst the generalisability of these findings is uncertain (see Ch. 5. 5. 2), and they need to be replicated with more carefully selected groups, they do suggest that the suggestibility of people with learning disabilities is not, as, for example, Beail (2002) suggests, simply a reflection of the idiosyncracies of the GSS.

Given that the focus of this thesis is the putative 'psychological vulnerability' of people with learning disabilities, the analysis of the results has focussed on the differences between the performance on the measure of suggestibility of people in this group and their counterparts in the general population. Suggestions for minimising the practical impact of these differences are made at the end of this chapter Next, though, a third personality characteristic, confabulation, which may also be relevant to police detention and interviewing is examined.

5.8 CONFABULATION

5.8.1 THE DEFINITION AND MEASUREMENT OF CONFABULATION

Developing from studies of the difficulties of people with organic amnesias (Kopelman, 1987; Lezak, 1995) or serious mental health problems (Nathaniel-James and Frith,

1996; Sigurdsson, Gudjonsson, Kolbeinsson and Petursson, 1994; Smith and Gudjonsson, 1995a), confabulation refers to:

> 'problems in memory processing where people replace gaps in their memory with imaginary experiences which they believe to be true' (Gudjonsson, 1992a, p.136; see also Berlyne, 1972; Mercer et al., 1977).

Increasingly, however, the potential importance of confabulation during police detention and interviewing has been recognised (Gudjonsson, 1992a; Milne and Bull, 1999). There are two sources of evidence. First, analyses of successful appeals against conviction suggest that, even among individuals who do not have a personality disorder, susceptibility to confabulation may lead to the provision of information which is inadvertently self-incriminating, including false confessions. In the case of Andrew Evans (see Ch. 5.1; and Gudjonsson, 2003, for a detailed account), for example, it appears that a man with long-standing psychological problems, experiencing mental distress following medical discharge from the army, developed a 'memory distrust syndrome' (Gudjonsson and MacKeith, 1982) after the police challenged him about an error in his alibi for a murder. Without any prompting, he then invented details to support his feeling that he 'must have' been involved in the offence. At his trial in 1973, it was argued that the vagueness of his statements to the police and the many factual errors they contained reflected a 'psychogenic amnesia'. Almost twenty-five years later, the Court of Appeal rejected this diagnosis, and accepted that Mr. Evans, who had an abnormal tendency to confabulate, and a need for attention, had simply produced material which he found exciting and, he thought, made others believe that he was important and interesting (for a similar case, in the U.S.A., see Gudjonsson, 1992a, p. 316 ff.).

Secondly, from an 'individual differences' perspective, Sigurdsson and Gudjonsson (1996b), examining Icelandic convicted prisoners who were alleged 'false confessors', found that individuals who reported that, at some point they had believed in the truth of their confessions (N=9 for this part of the study) confabulated more than their counterparts (N=48). In this study, and others adopting a similar approach, the accepted formal measure of confabulation is based on the Gudjonsson Suggestibility Scales (Gudjonsson, 1997; see Ch. 5.5). Following Gudjonsson (ibid.), it is scored from material which is not presented in the narrative passage but is reported during

immediate, and then delayed, free recall. Though much more difficult to score reliably than the memory and suggestibility measures, the inter-rater reliability of confabulation on the GSS 2 is satisfactory for both Immediate recall ($\kappa = 0.803$) and for Delayed recall ($\kappa = 0.724$; $p<0.01$, for each; Clare et al., 1994).

Theoretically, it has been proposed (Mercer et al., 1977), that confabulation takes place when an individual not only has: (i) a memory impairment; but also (ii) an expectation that a response should be made; (iii) an overlearned or affectively significant response available to him or her; and (iv) an impairment of self-monitoring (that is, impaired executive functioning, Baddeley, 1990). It seems, then, that confabulation occurs in response to uncertainty. Supporting this account is evidence (Gudjonsson and Sigurdsson, 1996; Perlman et al., 1994; Register and Kihlstrom, 1988; Smith and Gudjonsson, 1986; Smith and Gudjonsson, 1995a; Tata and Gudjonsson, 1990) that memory impairments increase confabulation. Moreover, other findings suggest that participants confabulate more when they have been asked misleading questions repeatedly (Register and Kihlstrom, ibid.) or have received severely negative feedback (Tata and Gudjonsson, ibid.). More recently, it has appeared that the concept of confabulation may be more complex than was first thought. Kopelman (1987) has proposed, based on his investigations of organic amnesias, that there may, in fact, be two distinct forms:

(i) provoked or 'momentary' confabulation reflecting a normal response to lapses in memory; and

(ii) spontaneous or 'fantastic' confabulation relating to the effects of frontal lobe pathology.

Gudjonsson (1997) has called these two forms *distortions* (equivalent to the 'provoked' form) and *fabrications* (equivalent to the 'spontaneous' form). Consistent with Kopelman's (ibid.) distinction, a number of studies suggest they are unrelated (Gudjonsson and Clare, 1995; Gudjonsson and Sigurdsson, 1995; Gudjonsson and Sigurdsson, 1996; Smith and Gudjonsson, ibid.). Indeed, Gudjonsson and Clare's (ibid.) factor analysis indicated that distortions and fabrications load on separate factors. The implication is that they reflect different psychological phenomena.

5.8.2 PREVIOUS STUDIES OF CONFABULATION

Based on Mercer et al.'s (1977) account, it would be expected that confabulation would be related to factors which may increase uncertainty. Surprisingly, despite some supportive evidence for this account (Gudjonsson and Sigurdsson, 1996; Register and Kihlstrom, 1988; Smith and Gudjonsson, 1986; Smith and Gudjonsson, 1995a; Tata and Gudjonsson, 1990), other findings suggest that confabulation is *not* associated with :

- intellectual ability (Gudjonsson and Clare, 1995);
- memory impairments (Gudjonsson and Clare, ibid.; Sigurdsson and Gudjonsson, 1996b; Smith and Gudjonsson, 1995b; Sigurdsson et al., 1994);
- low self-esteem (Smith and Gudjonsson, 1995b); or with
- compliance (Smith and Gudjonsson, 1995b).

Nor is there consistent support for Kopelman's (1987) 'two form' conceptualisation: for example, contrary to expectations given the established association between problems in executive functioning and schizophrenia (Joyce, Collinson and Crichton, 1996; Wykes, Reeder, Corner, Williams and Everitt, 1999), Smith and Gudjonsson (1995b) found that forensic in-patients with this diagnosis (N=16) produced fewer fabrications than their counterparts with anti-social personality disorder (N=7).

Nevertheless, despite these discrepant findings, the potential importance of confabulation suggests that it should continue to be explored. Though Gudjonsson and Clare (1995, N=145) found that neither distortions nor fabrications correlated significantly with intellectual functioning, the results of two eye-witnessing studies provide indirect evidence that, compared with their 'general population' peers, people with learning disabilities may be more susceptible to confabulation. The first study, by Perlman and her colleagues (Perlman et al., 1994), used participants attending 'learning disabilities' services. Compared with their peers (N=30), the intellectually disadvantaged participants (N=30) reported significantly more confabulations (fabrications and distortions combined) during free recall. Subsequently, Milne et al. (1999) also found that men and women with mild learning disabilities (N=47) confabulated more than their 'general population' peers (N=38). Unfortunately, though, in the context of this thesis, the impact of the findings of both studies is limited by the identification and sampling of the experimental and comparison groups (see Ch.5.5.2).

5.9 STUDY 8: SUSCEPTIBILITY TO CONFABULATION

5.9.1 INTRODUCTION

Whilst the conceptualisation of confabulation seems to need further development, Gudjonsson's (1992a, 1993, 1994, 1999) proposal that it may be a 'psychological vulnerability' for people with learning disabilities has some experimental support (Milne et al., 1999; Perlman et al., 1994, but c.f. Gudjonsson and Clare, 1995). Further support was obtained from the findings of a preliminary study (initially reported in Clare and Gudjonsson, 1993).

In their study, Clare and Gudjonsson (1993) examined confabulation on the GSS 2 (Gudjonsson, 1987, 1997). As expected (Gudjonsson and Sigurdsson, 1996; Milne et al., 1999; Perlman et al., 1994; Sigurdsson and Gudjonsson, 1995, 1996b; Smith and Gudjonsson, 1995b; Sigurdsson et al., 1994), at both Immediate and Delayed Recall, the 'learning disabilities' group (N=20; mean Full Scale IQ: 65; s.d. 5.3) produced significantly more ($p<0.025$) confabulations than their 'general population' peers (N= 21; mean Full Scale IQ: s.d. 7.2). Given the discrepant findings (Gudjonsson and Clare, ibid.), it seemed worthwhile, in the context of this thesis, to extend the data base of the preliminary study. In addition, at the time when this study was carried out, confabulation was still being treated as a unitary construct. Subsequent developments, indicating that there are two distinct forms, distortions and fabrications (Gudjonsson and Clare, ibid.; Gudjonsson and Sigurdsson, 1995; Gudjonsson and Sigurdsson, 1996; Smith and Gudjonsson, 1995a), suggest that it would also be pertinent to explore the relationship between them.

The aims of the study, then, were:

(i) to extend the findings of Clare and Gudjonsson's (1993) preliminary comparison of confabulation among people with mild learning disabilities and their peers in the general population. It was expected that, compared with their 'general population' counterparts, the 'learning disabilities' group would confabulate more;

(ii) to explore the relationships between distortions and fabrications. It was expected that, within each group, distortions and fabrications would not be related.

5.9.2 METHOD

Participants

There were two groups of volunteer participants, drawn as convenience samples. All the participants were fluent in English:

Learning disabilities: the LD group comprised the 35 men and 22 women who had taken part in Study 6 (Ch.5.3) and Study 7 (Ch. 5.6). Twenty of them had also participated in the preliminary study (Clare and Gudjonsson, 1993) and had also been involved in Study 1 (Ch. 3.2); they were not retested.

General population: the GP group comprised the 37 men and 22 women who had taken part in Study 6 (see Ch. 5.3) and Study 7 (see Ch.5.6). Again, twenty of them had already participated in the preliminary study (Clare and Gudjonsson, 1993) and Study 1 (Ch. 3.2); they were not retested.

Measures

1. *Intellectual functioning*: the majority (N=76) of the participants completed all eleven sub-tests of the WAIS-R (Wechsler, 1981). For practical reasons, the remaining 40 participants, who had already taken part in Study 1 (Chapter 3.2), completed only eight sub-tests (four verbal, and four non-verbal; see Ch. 3.2.2); their scores were used to prorate Full Scale IQ.

2. *Confabulation*: Following Gudjonsson (1997), confabulations were scored separately for immediate and delayed recall of the narrative passage of the GSS 2 (Gudjonsson, 1987, 1997). For each, total confabulations was obtained by adding the number of distortions and fabrications. A distortion was defined as a change in the details of an idea in the story, or the substitution of an idea from one part of the story for another. A fabrication was the defined as the introduction of entirely new material which was neither mentioned nor implied in the story.

Procedure and scoring

Participants were seen individually, in a quiet room, at their place of work or centre/club, or at day-services or residential placements for people with learning disabilities. I had assessed the forty participants involved in the preliminary study. The

remaining seventy-six participants were recruited and assessed by Ms. Philippa Cross, the Research Assistant whom I had trained in the administration of the tests (see Study 2, Ch. 3.3; and Studies 6 and 7, this Chapter). The same procedure was used for all the participants. First, each person completed the assessment of intellectual functioning. Then, the Gudjonsson Suggestibility Scale, Form 2 (the GSS 2, Gudjonsson, 1987, 1997) was presented, as described in Study 7. Using the guidance provided by Gudjonsson (1997), Immediate and Delayed recall for each participant were scored for distortions and fabrications, separately. Since it had been established that I was a reliable scorer (Clare et al., 1994), I carried out all the scoring.

5.9.3 RESULTS

The chronological ages and Full Scale IQ scores of the two groups are shown in Table 5.3.1 (Ch. 5.3.3). As initially reported in the Results for Study 6 (see Ch. 5.3.3), the mean chronological ages of the two groups did not differ significantly. However, as expected the mean Full Scale IQ score of the 'learning disabilities' (LD) group was significantly lower than that of the 'general population' (GP) group.

Two analyses were then carried out.

Comparison of the scores for total confabulations, distortions and fabrications

Table 5.9.1 shows, for Immediate and Delayed Recall, the mean scores, standard deviations, and ranges of scores for total confabulations, distortions and fabrications of the LD and GP groups.

Table 5.9.1 Confabulation scores for the two groups

	Learning disabilities			General population			Mann-Whitney *U* value
	mean	s. d.	range	Mean	s. d.	range	
Immediate recall							
Distortions	1.3	1.2	0 – 6	0.9	1.1	0 – 5	$U = 1332$*
Fabrications	0.4	0.8	0 – 4	0.4	0.7	0 – 2	$U = 1635$ n.s.
Confabulations	1.8	1.4	0 – 6	1.4	1.2	0 – 6	$U = 1401$ n.s.
Delayed recall							
Distortions	1.2	1.1	0 – 4	1.2	1.0	0 – 4	$U = 1603$ n.s.
Fabrications	0.5	0.9	0 – 3	0.5	0.7	0 – 2	$U = 1663$ n.s.
Confabulations	1.7	1.4	0 – 7	1.7	1.2	0 – 4	$U = 1641$ n.s.
	N = 57			N = 59			

n.s. not significant; * sig. at $p<0.05$ (1 – tailed)

Since none of the scores approximated to the Normal distribution, the medians were compared statistically by calculating Mann-Whitney's *U* (see Appendix 7 for details). Unexpectedly, the participants with learning disabilities did not confabulate significantly more than their GP counterparts on either Immediate or Delayed recall; nor did they produce more fabrications. The only significant difference between the two groups was on Immediate recall, where the 'learning disabilities' participants produced more distortions.

Relationships between distortions and fabrications

The correlations between distortions and fabrications were calculated for each group separately. Since neither group's data approximated to the Normal distribution, Spearman's Rank-Order Correlation Coefficients were used (see Appendix 7 for details). As expected, among the LD group, there were no significant correlations between distortions and fabrications at Immediate recall (ρ = -0.05, 2-tailed) or at Delayed recall (ρ = 0.04, 2-tailed). Similarly, among the GP group, distortions and fabrications did not correlate significantly at Immediate recall (ρ = -0.05, 2-tailed) or Delayed recall (ρ = 0.08, 2-tailed).

5.9.4 DISCUSSION

Extending an earlier investigation by Clare and Gudjonsson (1993), confabulation was compared among people with mild learning disabilities and their 'general population' counterparts. Whilst the inter-rater reliability of the scoring was not assessed, it seems unlikely (Clare et al., 1994) that this omission was of practical significance.

Unexpectedly, given the results of the preliminary study (Clare and Gudjonsson, 1993) and of other investigations (Milne et al., 1999; Perlman et al., 1994; but c.f. Gudjonsson and Clare, 1995), and their poorer Immediate and Delayed recall (see Table 5.6.2), the participants with learning disabilities did not confabulate significantly more. In fact, with the exception of Immediate recall, on which the LD group were more likely to report distortions, and which, of itself is probably of limited importance, there were no significant differences between the two groups. As expected (Gudjonsson and Clare, 1995; Gudjonsson and Sigurdsson, 1995; Gudjonsson and Sigurdsson, 1996; Smith and Gudjonsson, 1995a), distortions and fabrications were not related in either the LD or the GP group.

Superficially, the findings suggest that assumptions about confabulation based on a 'status' approach to people with learning disabilities are unwarranted and that, contrary to Gudjonsson's (1992a, 1993, 1994, 1999) suggestion, overall, despite the increase in distortions on Immediate recall, overall, confabulation is not a 'psychological vulnerability' for people with learning disabilities. Unfortunately, when the proportion of confabulations to recall was calculated for each group by dividing the number of confabulations at Immediate and then Delayed recall by the sum of the relevant memory scores and confabulations, the findings were less encouraging. Compared with their counterparts in the general population, the LD group produced twice as much confabulated information (LD: 18% for Immediate recall; 23% for Delayed recall; GP: 8% for Immediate recall; 9% for Delayed recall). This suggests that confabulation may, after all, be of practical significance during police detention and interviewing.

5.10 GENERAL DISCUSSION OF CONFABULATION

Despite superficially encouraging findings, further analysis indicated that, compared with their 'general population' counterparts, people with learning disabilities produce relatively more distortions and fabrications. In the context of this thesis, this finding is of practical significance.

From a theoretical perspective, the findings provide further support for Kopelman's (1987) proposal that there are two distinct forms of confabulation (Gudjonsson and Clare, 1995; Gudjonsson and Sigurdsson, 1995; Gudjonsson and Sigurdsson, 1996; Smith and Gudjonsson, 1995a). The results are also consistent with the account provided by Mercer et al. (1977) which suggests that confabulation reflects feelings of uncertainty as a result, in part, of memory impairments (Gudjonsson, 1988a; Martin et al., 2000; and see Ch. 5.6.) and problems in executive functioning (Pennington and Bennetto, 1998). Nevertheless, the findings of this study cannot easily be reconciled with those of several other investigations, albeit using different participants (Gudjonsson and Clare, 1995; Sigurdsson and Gudjonsson, 1996b, Smith and Gudjonsson, 1995b; Sigurdsson et al., 1994).

The literature on confabulation, which is rather confusing, suggests that it would be unwise to place too much confidence in any single study. Though different studies have used different methodologies (in particular, the eye-witnessing studies of Milne et al. (1999) and Perlman et al. (1994)), it seems unlikely that the discrepancies reflect methodological issues. Although clarifications of the definition and scoring of confabulation have been carried out over time (Clare et al., 1994), the majority of investigations (Gudjonsson and Clare, 1995; Gudjonsson and Sigurdsson, 1995; Register and Kihlstrom, 1988; Sigurdsson and Gudjonsson, 1995, 1996b; Smith and Gudjonsson, 1986; Smith and Gudjonsson, 1995a,b; Sigurdsson et al., 1994; Tata and Gudjonsson, 1990) use a similar methodology, or are at least based on the same accepted measure (the GSS), and most have been carried out by Professor Gudjonsson and his colleagues. Yet as he himself, rather ruefully, concludes from his review, the:

> 'findings show the complexity of the nature of confabulation' (Gudjonsson, 1997, p. 19).

How might the discrepancies between different studies be explained?

First, much more detailed analysis of distortions and fabrications and their relationships with a range of cognitive, affective, and other individual characteristics is needed so that the conceptualisation of confabulation can be developed. Secondly, and relatedly, though the modest test-retest correlations (Gudjonsson and Clare, 1995; Smith and Gudjonsson, 1995a) and investigations of the impact of specific manipulations during interviewing (Register and Kihlstrom, 1988; Tata and Gudjonsson, 1990), suggest that confabulation may be related to situational effects and interact with participants' characteristics, so far these have barely been explored empirically. Thirdly, and again relatedly, little attention has been paid to the stimulus material, and its impact on different participants. The case of David MacKenzie (see Ch. 1.5), who made voluntary confessions to some murders which he could not have committed, illustrates this point. In contrast with his response to the GSS 2 story, which is not crime-related, he produced elaborate confabulations to the story of the GSS 1 which relates to the robbery of 'Anna Thompson' (Gudjonsson, 1997) and to which a sentence had deliberately been added indicating that she was sexually assaulted and killed. Indeed, Mr. MacKenzie subsequently claimed that he had been involved in her death (Gudjonsson, 1992a, p. 243 ff.). The implication is that, in some circumstances, the properties of the material used to assess confabulation may interact with an individual's particular psychopathology to produce distortions and/or fabrications. Whilst confabulation has been examined almost exclusively from an 'individual differences' perspective, some of the discrepant findings might be resolved through the adoption of a functional approach (as, for example, Gudjonsson, 1986, has applied to acquiescence, see Ch. 5.2).

Nevertheless, though it should be regarded with caution, the findings suggest that confabulation is a 'psychological vulnerability' for people with learning disabilities, and needs to be considered during police detention and interviewing

5.11 GENERAL DISCUSSION

In this Chapter, three experimental studies have been reported to examine Gudjonsson's (1992a, 1993, 1994, 1999) proposal that, compared with their peers in the general population, people with learning disabilities are more likely to have the personality characteristics of acquiescence, suggestibility and confabulation. Compared with their GP counterparts, during unprompted free recall, the LD group provided more limited

correct information (Study 7, Ch. 5.6) and a greater proportion of information which was incorrect (Study 8, Ch. 5.9). In addition, during questioning, they demonstrated much greater readiness to 'give in' to questions or statements which contain premises based on prior information or assumptions, or expectations which indicated the desired response (Study 6, Ch. 5.3; and Study 7, Ch. 5.6), and maintained these responses in the face of interrogative pressure (Study 7, Ch. 5.6).

Relationships between acquiescence, suggestibility and confabulation

From a theoretical perspective, acquiescence, suggestibility and confabulation are conceptually related: they are all strategies, whether conscious or unconscious, for coping with uncertainty in response to questions or statements Gudjonsson, 1992a; Gudjonsson and Clark, 1986). The findings of empirical studies which do not involve participants with learning disabilities, or in which they form only part of the experimental sample, suggest that:

- acquiescence and suggestibility may be related (Gudjonsson, 1986, but c.f. Gudjonsson, 1990b). It seems likely that the relationship reflects the impact of 'leading questions' (Yield) since it is this aspect which correlates with acquiescence (Gudjonsson and Clare, 1995);
- confabulation may be related to the interrogative pressure aspect of suggestibility (Shift; Gudjonsson and Sigurdsson, 1996; Smith and Gudjonsson, 1995b) but not to Yield (Gudjonsson and Clare, ibid.); and
- neither distortions nor fabrications, considered separately, are related to acquiescence (Gudjonsson and Clare, ibid.).

It seems, then, that acquiescence may be most closely related to intellectual functioning whilst confabulation reflects other aspects of personality; interrogative suggestibility lies between the two. However, the relationships between the three personality characteristics have never been examined within a group comprising only men and women with learning disabilities.

The correlations between acquiescence, suggestibility and confabulation among the LD group (N=57) were calculated (using Pearson's Product Moment Correlation Coefficients or Spearman's Rank-Order Correlation Coefficients, when parametric tests were not appropriate, see Appendix 7 for details). Surprisingly, with the exception of the Shift aspect of suggestibility and acquiescence, which, contrary to predictions

(Gudjonsson and Clare, 1995), were significantly negatively related (r = -0.35; $p<0.01$, 1-tailed), *none* of the relationships were significant. The reasons for these findings are uncertain, and the data must be regarded as preliminary. Nevertheless, encouragingly, the findings suggest that there are not particular individuals who are at increased risk of susceptibility to all three characteristics.

So far, however, the personality characteristic which is, according to Cooke and Carlin (1998), of most relevance to the admissibility of evidence - compliance - has not been examined.

5.11.1 COMPLIANCE

Whilst the nature of compliance continues to be debated (Gudjonsson, 1992a; Milne and Bull, 1999; Rizutto, 1999), it has been defined predominantly as the act of 'going along' with:

> 'propositions, requests or instructions for some immediate instrumental gain' (Gudjonsson, 1992a, p.137).

Following this definition, a person who acts compliantly abrogates personal responsibility for decision-making: regardless of the individual's own views, he or she acts in accordance with the perceived wishes of others.

As already noted (see Ch.1.2), arguably, the admissibility in English law of uncorroborated confession evidence means that detention always has the potential to be coercive for the alleged perpetrators of criminal offences and lead them to provide information which is unreliable, misleading, or self-incriminating, including false confessions. To minimise this potential, there is a long-standing tradition, preserved and extended by the introduction of *PACE* and its accompanying Codes of Practice of providing safeguards to suspects (see Ch. 1.4). Unfortunately, though, as Gudjonsson (2003) concludes, wrongful convictions based on confession evidence provided by compliant detained persons still take place (for example, the case of Stephen Miller (*R. v. Paris, Abdullahi and Miller 1993*; see Ch. 1.5)).

In contrast with acquiescence, where a functional approach has been adopted (Gudjonsson, 1986), in compliance the primary focus of interest has been on the impact

of situational factors. These have been studied mainly through (i) analyses of 'real life' incidents in which people without any apparent psychological difficulties have made blatantly false confessions under the duress of a political regime (see Gudjonsson, 1992a, p.212 ff.) or committed atrocities against others (Kelman and Hamilton, 1989); and (ii) behavioural experiments, such as the influential series of investigations on 'obedience to authority' by Milgram (1974). Applying the findings of this work, Irving and Hilgendorf (1980) have proposed that police detention and interviewing inherently contain a number of situational factors which promote compliance among suspects, including:

- detention in an environment which is unfamiliar, or of limited familiarity;
- the threat of harm, including loss of self-esteem, emotional isolation, and, perhaps in the longer term, loss of liberty; and
- subordination to legitimate authority.

However, as already noted, some suspects seem much more susceptible than others to these situational effects (Pearse et al., 1998; see Ch. 4.1.3), suggesting that 'individual differences' may also be of importance. Two sources of evidence support this suggestion.

First, analyses of English cases where confession evidence has led either to criminal charges which have been dropped before trial (Gudjonsson, 1995; Gudjonsson and MacKeith, 1994) or convictions which have subsequently been quashed by the Court of Appeal (for example, that of Darren Hall in *R. v. O'Brien, Hall and Sherwood 2000;* see Ch.5.1.1, and Gudjonsson, 2003, for further details) has suggested that many involve men and women who, *inter alia*, seem to be unusually compliant. Similarly, abnormal compliance was one of the personality characteristics of Henry Lee Lucas, an American man who has confessed, on many occasions blatantly falsely, to approximately six hundred murders (Gudjonsson, 1999). Secondly, supporting the findings of an earlier study (Gudjonsson, 1989a), Gudjonsson (1991b) found that defendants (N = 20) who alleged that they had made one or more false confessions during police interviews were significantly more compliant than their 'resister' counterparts (N=20), men and women who denied their involvement despite forensic evidence against them. More recently, similar findings emerged from a large study (N=509) involving convicted adult prisoners in Iceland: compared with their peers, men and women who reported that they

had made a false confession at some time in their lives (N=62) were significantly more compliant (Sigurdsson and Gudjonsson, 1996b).

Drawing on previous work, particularly that of Milgram (1974), Gudjonsson (1989a) has proposed that individual differences in compliance mainly reflect two, related, factors, which interact with the specific situation. These are:

(i) eagerness to please and concern to protect personal self-esteem (Konoske, Staple and Graf, 1979);

(ii) avoidance of conflict and confrontation and fear of authority (Irving and Hilgendorf, 1980).

How might these factors be assessed? So far, two methods have been used: direct observation and self-report. Direct observation was used in the studies carried out by Milgram (1974), which involved counting the number of participants prepared to obey each stage of the experimenter's increasingly callous instructions. Gudjonsson (1997), however, has argued that such complex laboratory tasks are often impractical. Moreover, involving people in acts which they might later regret raises serious ethical concerns (Baumrind, 1964; Gudjonsson, 1997; Parker, 2000).

As an alternative, Gudjonsson (1989a) has developed a self-report scale, the Gudjonsson Compliance Scale (GCS, Form D). Though not without its critics (Cooke and Carlin, 1998), the GCS has become widely used as a measure of compliance in a forensic context. The GCS comprises twenty 'true'/'false' statements, with a high score indicating greater susceptibility to compliance. For seventeen of the items, a compliant response is given by 'true'; for the remaining three, by a 'false' response. Consistent with the proposed theoretical basis of compliance (Gudjonsson, ibid.), factor analysis suggests that ten of the items reflect difficulties in coping with pressure, with a further five comprising eagerness to please. The remaining five items are only modestly related and Gudjonsson (ibid.) remarks that this factor is 'rather obscure' (Gudjonsson, ibid., p. 536).

Whilst the relationship between the two putative components of compliance and the mechanism through which they may exercise their impact remains uncertain, Gudjonsson's (1989a) analysis suggests that compliant responding reflects low levels of self-esteem and self-efficacy. Consistent with this suggestion, Milgram (1974) found

that, compared with their peers, participants whose education was more limited and whose employment offered fewer opportunities for autonomous decision-making were more likely to obey the experimenter. The results of other studies support Milgram's (ibid.) findings. In Gudjonsson's (1989a) investigation, for example, soldiers and prisoners were more compliant than nurses or medical students. In turn, these 'carers' were more compliant than University students or academic staff. The most compliant group comprised the men and women (N=55) who alleged that they had made a false confession during police interviewing; the least compliant (N=13), the 'resisters', who, despite forensic evidence against them, denied any involvement. Similarly, consistent with Gudjonsson's (ibid.) analysis, it appears that compliant responding is related to performance on established tests of:

- guilt (Freedman, Wallington and Bless, 1967; Konoske et al., 1979);
- anxiety (Gudjonsson and Smith, 1995a);
- conformity (Gudjonsson, 1989a);
- social desirability (Gudjonsson, 1989a);
- neuroticism (Gudjonsson, 1989a; Sigurdsson and Gudjonsson, 1996b); and
- paranoid thinking (Gudjonsson, Sigurdsson, Brynjolfsdottir and Hreinsdottir, 2002)

Though intellectual ability and compliance do not appear to be related (Gudjonsson, 1989b, 1990b, 1991b; Sigurdsson and Gudjonsson, 1996b), it might be expected that, because of their generally low self-esteem and limited sense of self-efficacy (Hodapp and Fidler, 1999; see also Weisz, 1999, and Ch. 4), people with learning disabilities would be at greater risk of compliant responding than their peers in the general population. Unfortunately, it does not appear that the GCS can be used to examine this suggestion. According to the Manual:

> '(i)t is not advisable to administer the Scale to subjects whose I.Q. score falls below 70. Some of the items contain words, concepts and ideas that are complicated…Even some more intellectually able persons may have problems understanding some of the items' (Gudjonsson, 1997, p. 13).

Analysis of the GCS suggests that this caution is warranted. Using the Flesch Formula (Flesch, 1948) to analyse the twenty statements indicated that their 'Reading Ease' is 76.5 ('fairly easy' on a scale from 0 'very difficult' to 100 'very easy'). This translates

(Ley, 1977) into a *crude estimate* that a Full Scale I.Q. score of 87 or more would be needed to understand the material fully.

To maximise the use of the GCS for people with learning disabilities, Gudjonsson (1997) has devised an alternative form (Form E), to be completed by an informant. Whilst it appears useful (Gudjonsson, 1995; Gudjonsson and MacKeith, 1994), the items, like those of the original form, are transparent. As Gudjonsson (1997) and others (Cooke and Carlin, 1998), have pointed out, they could be easily faked by respondents. However, from experience as a clinician, this is not the main problem. Informants who are paid carers or partners have rarely known the individual as a child. This means that two items (nos. 1 and 5) which relate strongly to the ability to cope with pressure (Gudjonsson, 1989b), cannot be completed; instead, the person's score has to be pro-rated from the remaining eighteen statements. In addition, paid carers seem to compare individuals with learning disabilities with others with the same diagnosis; given the variation in scores among different groups (Gudjonsson, 1989a), such a practice *may* lead to an under-estimate of the person's compliance. In theory, parents and other close family members may be the most appropriate source of information but the complexity of the GCS (Gudjonsson, 1997) means that, on some occasions, they too will be unable to respond to the items appropriately.

Given Gudjonsson's (1997) advice and the subsequent analysis of its complexity, it would have been unwise to have tried to use the self-report version of the GCS to examine Gudjonsson's (1992a, 1993, 1994, 1999) proposal that compliance is a 'psychological vulnerability' for people with learning disabilities; unfortunately, it was not feasible to use the informant version instead. It is an acknowledged limitation of the empirical work described in this thesis that no attempt was made to develop an appropriate methodology to assess compliance; this very important task still needs to be carried out.

Nevertheless, the findings of the studies reported in this chapter are of practical relevance. Though many interviews are brief, routine, affairs (Baldwin, 1994; Moston et al., 1992; Pearse, 1997; Pearse and Gudjonsson, 1996; and see Ch. 1.2), and factors internal to suspects may be of limited importance (Pearse et al., 1998), this is not inevitable (Baldwin, 1993; McConville and Hodgson, 1993; Pearse, 1997; Pearse and

Gudjonsson, 1996, 1999). Under some circumstances, the personality characteristics discussed in this chapter, which are a greater 'vulnerability' for people with learning disabilities than their 'general population' counterparts, may compromise individuals' ability to make decisions which minimise the likelihood that they will provide information which is misleading, unreliable, or inadvertently self-incriminating. How might this 'vulnerability' be reduced?

Detailed guidance about interviewing people with learning disabilities is available elsewhere (see, for example, excellent discussions by Bull and Cullen, 1992; Finlay and Lyons, 2002; Milne and Bull, 1999; and Prosser and Bromley, 1998). In the particular context of police detention and interviewing, however, it may be helpful, first, for police officers and solicitors to ensure that suspects understand the questions and statements to which they are responding. This could be assessed simply by asking detained persons to explain material, in their own words, using, for example, paraphrased recall (see Ch. 3; and see Ch. 3.5 for a discussion of this point in relation to the caution and other legal rights). Secondly, at the beginning of each interview session, suspects should be advised strongly that:

- they might not know the answers to questions, or might be unable to recall information accurately, and that it is acceptable to state that they 'don't know;
- if questions are repeated, that does not necessarily mean that their initial response has been incorrect; and
- the questions asked might be (mis)leading since the interviewer is trying to reconstruct events at which he or she was not present.

However, these strategies do not avoid a more fundamental difficulty: compared with their peers in the general population, adults with learning disabilities appear to experience problems in providing detailed unprompted accounts (Milne, Clare and Bull, 1999; Perlman et al., 1994; and see Study 7, Ch. 5.6). This means that it is difficult to avoid direct questioning. Based on a preliminary study which involved eliciting accounts of a film from eye-witness participants, Milne et al. (ibid.) have suggested that the 'cognitive interview' (Fisher and Geiselman, 1992) may assist in enhancing recall. Approximately one-third (35%) more correct information was obtained during free recall from men and women with mild learning disabilities who were interviewed with a 'cognitive interview' rather than an exemplary 'standard' interview (and as Baldwin, 1994, has commented (see Ch.1.2), much police interviewing is far from exemplary).

Whilst the findings are encouraging, it is not clear whether this approach, which was initially developed to assist victims and other non-suspect witnesses to provide information, is likely to be effective with alleged perpetrators; much further investigation is needed.

In the meantime, the results of the investigations carried out in this chapter and the two previous chapters provide convincing support for Gudjonsson's (1992a, 1993, 1994, 1999) proposal that, compared with their 'general population' counterparts, people with learning disabilities have 'psychological vulnerabilities' which place them 'at risk' during police detention and interviewing. In the next two chapters (Chs. 6 and 7), practical attempts to alleviate this 'vulnerability' are described.

CHAPTER 6

IMPROVING THE ACCESSIBILITY OF THE CAUTION AND THE LEGAL RIGHTS PRESENTED IN THE *NOTICE TO DETAINED PERSONS*

The results of the three studies reported in Ch. 3 indicated that, consistent with the suggestion made by Gudjonsson (1992a, 1993, 1994, 1999), limited understanding of the information about the caution and legal rights provided in the *Notice to Detained Persons* is a 'psychological vulnerability' for people with mild learning disabilities. However, the disadvantages of these men and women need to be seen in the context of the difficulties experienced by their 'general population' counterparts, including those who are intellectually able, or have special training (such as the police). Worryingly, Home Office revisions of the material in the *NDP* do not appear, overall, to have improved its accessibility; it remains too complex.

Whilst it is possible to agree with Jackson's (1995) contention that legal language does not have a communicative function, such cynicism is not helpful in trying to improve the situation. The caution and legal rights are legally important in decisions about the admissibility of evidence (see Ch. 1.5), and are of practical importance to suspects (Baldwin, 1992; Gudjonsson and Petursson, 1991; Leng, 1993; McConville and Hodgson, 1993; Moston et al., 1992; Pearse and Gudjonsson, 1997; Pearse et al., 1998) in protecting them from inadvertently making self-incriminating statements. The purpose of this chapter is to describe an attempt to devise and evaluate a new version of the *Notice to Detained Persons* which would improve its accessibility and, perhaps, minimise the likelihood of miscarriages of justice involving 'vulnerable' suspects.

Four versions of the *Notice to Detained Persons* are referred to in this chapter, each presenting a different form of the caution and/or the legal rights. Adopting the same format as Ch. 3, these four versions are invariably referred to as:

1. *Original*: the version which was introduced in England and Wales on 1st January, 1986, and remained in use until 31st March, 1991;
2. *Revised*: the version which was introduced on 1st April, 1991, and remained in use until 31st March, 1995;
3. *Current*: the version which was introduced on 1st April, 1995, and is currently in use. It includes the new form of the caution, but is otherwise identical to the *Revised* version;
4. *Experimental*: the amended version of the *Revised* caution and rights (then the standard version) whose development and piloting are described in this chapter.

6.1 BACKGROUND

6.1.1 ASSESSING THE ACCESSIBILITY OF INFORMATION

In Ch. 3.1.1, it was argued that the understanding of relevant information is necessary, though not sufficient, for making valid legally-significant decisions (Appelbaum and Grisso, 1988, 1995; Grisso and Appelbaum, 1998; Law Commission, 1995). A number of psychological methodologies were outlined for eliciting people's understanding of relevant information. Mostly, these have been used to compare the performance of groups whose characteristics place them at risk of impaired decision-making with that of their counterparts in the general population (for example, Clare and Gudjonsson, 1991; Wong et al., 2000). An alternative approach (e.g. Shepherd et al., 1995; Fenner et al., 2002) focusses instead on the information, and examines the extent to which it is adequately understood by the target decision-maker(s). Adopting this approach, it is the information itself which is treated as potentially problematic. The problems may arise in relation to (i) the language used, and (ii) the presentation of that language.

Though there are no agreed criteria for evaluating the acceptability of legally-significant information (Penny Letts, personal communication, 1999), recent case law and proposed legislation have suggested that it should be provided in 'broad terms and simple language' (*Re C (Adult: Refusal of Treatment) 1994*); s. 2(3), draft Bill on Mental Incapacity (Law Commission, 1995)). Since it is assumed that simpler language is more easily understood, a number of strategies have been devised for making language,

including legal language (Jackson, 1995; Lloyd-Bostock, 1988), less complex. *Inter alia*, these strategies involve:

- using short sentences (if possible, with fewer than 25 words);
- avoiding embedded clauses;
- removing archaisms;
- substituting common words for technical terms;
- avoiding the use of common words in uncommon ways (such as 'caution', Rock, 1999a);
- eliminating complex syntax such as negatives (especially double-negatives), passives, and nominalisation (the use of an abstract noun for an activity that could be expressed by a verb, Asprey, 1991);
- limiting binomials (a 'sequence of two words which belong to the same form-class, and which are syntactically co-ordinated and semantically related', Gustafsson, 1984, cited in Jackson, 1995, p. 121; as in, for example, the following part of the standard witness oath '… the truth, the whole truth and nothing but the truth');
- reducing impersonality and engaging the reader directly.

Whilst the relationship between understanding oral and written language is not well-understood, it seems likely that both of them involve cognitive sub-processes which interact to form specific strategies which are adopted in specific situations (Danks and End, 1987). Traditionally, the accessibility of written information, including legal information, is assessed through readability formulae. Typically, these formulae, which were initially devised to quantify and predict the complexity of educational materials, combine average sentence-lengths and average word-lengths with a constant, so that information appears increasingly difficult as it contains longer sentences and more complex vocabulary. Some of the most widely used (now available as part of most standard word-processing software packages) are outlined below:

- the Flesch Formula (Flesch, 1948), which is the most established method (Scott, 1996) uses the number of syllables in a word sample and the average number of words in each sentence to provide a 'Reading Ease' (R.E.) score and a description of style – from 0 ('very difficult') to 100 ('very easy') - and the (U.S.A.) reading grade level. Ley (1977) has translated the scores to produce *rough estimates* of the

level of intellectual ability (Full Scale IQ) required to understand a particular piece of written material;

- the Fog Index (Gunning, 1952) is based on the sum of the average number of words in each sentence of a word sample and the number of words with three or more syllables in the same sample to calculate the (U.S.A.) reading grade level;
- the Fry Readability Scale (Fry, 1968) uses the average number of sentences and syllables in three samples, each of 100 words, to calculate the (U.S.A.) reading grade level;
- the Dale-Chall Formula (Dale and Chall, 1948) is based on the sum of the average sentence length in a word sample and the number of words in that sample which are not on the Dale List (that is, the 3000 words known to at least 80% of fourth-grade (9-year-old) American children). In common with other formulae, the result is used to calculate the (U.S.A.) reading grade level of the material.

Not surprisingly, given that the different methods involve a very limited range of basic linguistic variables (Bormuth, 1966), readability formulae produce broadly similar, albeit rough and ready (Hartley, 1994), results.

The use of readability formulae, and other quantitative measures, has been subjected to considerable criticism. Over the past twenty years, cognitive psychologists have increasingly moved away from conceiving language as information to be analysed syntactically and semantically and then stored in memory. Instead, it is now seen as a set of processing instructions for the construction of a mental representation of the described situation (see review by Zwaan and Radvansky, 1998). In relation to written legal information, forensic linguists (that is, people who use linguistics to assist the fact-finding processes of the law (Jackson, 1995)), such as Jackson (1995), Owen (1996), Scott (1996) and Rock (1999a, b) have argued that measures such as readability formulae treat the material ('text' in forensic linguistics) as if it could be isolated: no attempt is made to disentangle the complicated interactions between the messages (conscious and unconscious) provided by the text-writer, the text itself, and the skills and mental models (scripts, scenarios) of the text-reader. Nevertheless, there is a body of evidence which suggests that people's understanding of written information, including legal information (Gudjonsson, 1990a, 1991a; Jackson, 1995; Masson and

Waldron, 1994; Sherr, 1986), is often associated with readability (Bormuth, 1966; Ley, 1977), particularly for less able readers (see Hartley, 1994, p. 172, for a case example).

In contrast with the extensive consideration given to the use of language in written information, issues relating to its presentation have received rather less attention. Still, there is evidence from a series of experimental studies, initiated by Hartley (1978 et seq.), on the design of educational materials suggesting that layout affects the ease with which information can be understood and retrieved (Hartley, 1994). Traditionally, legal material uses only the horizontal dimension of the printed page, through a linear format with little punctuation and small print. Bhatia (1993) has suggested that much more could be made of the vertical dimension, for example, through flow-charts and tabulated presentations. More recently, modern information technology has enabled a third dimension, that of 'depth' (layers of text), to be used so that alternative versions of the same material, designed for different audiences, can be presented in such a way that the reader can see how they are related (see Jackson, 1995). These developments have made little impact on the presentation of the *Notice to Detained Persons*.

Following Grisso's (1981) pioneering study in the U.S.A., indicating worryingly poor understanding of the *Miranda* rights among adolescents remanded in custody following alleged or proven 'felonies' and both adult 'offenders' and their 'non-offender' counterparts (see Ch. 3.1.2), a small number of studies have attempted to revise the wording of the caution and legal rights, or their equivalent.

6.1.2 PREVIOUS ATTEMPTS TO REVISE THE CAUTION AND LEGAL RIGHTS

Two studies have examined whether simplifying the wording of the *Miranda* rights would improve adolescents' knowledge and understanding. In the first study, by Ferguson and Douglas (1970), initial interviews with adolescents in police custody were used to reword the rights into 'ordinary' language. Performance on the revised and standard versions was then compared among ninety young people: 'offenders', detained in institutions after adjudication (conviction) and 'non-offenders' (high school pupils). Free recall was used to assess knowledge; understanding was assessed using a series of 'yes'/'no' questions. Of most importance here, the simplified version was not more effective than the standard wording for any of the groups. Similar results were obtained

from the second study, by Manoogian (1978, cited in Grisso, 1981), which used Grisso's (1981) paraphrasing task (the *Comprehension of Miranda Rights, CMR*) to measure comprehension. Of course, the negative findings of these two studies do not mean that a more successful version could not be devised. Nevertheless, little further attention has been paid to the possibility of simplifying the *Miranda* rights in the U.S.A. Rather, as Shuy (1997) points out, the focus has been on their interpretation and implementation by the police in their everyday practice.

Elsewhere, a very small number of attempts have been made to revise the caution and legal rights or their equivalent. For example, in Australia, Gibbons (1990), an applied linguist, has used his experience of assisting defendants from language minorities to suggest some revisions to the New South Wales caution. These include rewording the sentence:

> 'I want you to understand that you are not obliged to say anything unless you wish, but whatever you say will be recorded on the typewriter and may be used in evidence'
>
> as:
>
> *You do not have to say anything if you do not want to. We might use your answers in court* (ibid., p. 236).

However, not all the sentences were revised. Moreover, no evaluation was carried out of the complexity of the amended version. Nearer to home, Cooke and Philip (1998), aware of the lack of a standardised Scottish caution, based their study of understanding on a version which was asserted to be 'simpler than many which are routinely observed in transcripts of police interviews' (ibid., p.23). Again, though, no formal assessment of its complexity was carried out.

Given the legal and practical significance of the caution and legal rights (or their equivalent), it is surprising that so few attempts have been made at simplification. Discussions of this issue seem to focus on two explanations. First, there may be practical difficulties: as Grisso (1981) points out in relation to adolescents, it may be very difficult to devise a single rewording which successfully addresses the range of cultural, linguistic, and educational backgrounds of the intended audience. Secondly, there may be broader issues relating to the purpose of the legal system. Jackson (1995) is not alone in his view that legal language does not have a communicative function. In

many police training manuals, for example, attempts to help suspects understand their legal rights are perceived as a barrier to effective interrogation (Gudjonsson, 1992a) and detrimental to the construction of 'the case for the prosecution' (McConville et al., 1991).

These problems do not mean that no effort should be made to revise the caution and legal rights. In the context of the studies described in Ch. 3, Grisso's (1981, p. 197) suggestion, in relation to the *Miranda* warnings, that 'simplifying the explanation of rights …surely can do no harm' must be an understatement. So far, the series of exploratory studies reported in this chapter is the only published attempt to carry out such work in England and Wales; because of this uniqueness, it is described in detail.

6.2 STUDY 9: DEVELOPING AN *EXPERIMENTAL* VERSION OF THE *NOTICE TO DETAINED PERSONS*

6.2.1 INTRODUCTION

The development of an experimental version of the *NDP* (initially reported as Clare and Gudjonsson, 1992) was commissioned by the Royal Commission on Criminal Justice (Runciman, 1993) to inform their review of the protection offered to suspects in police detention; they had no specific interest in suspects with learning disabilities. Though psychological methodologies had been used previously to evaluate the information, this was the first attempt in England and Wales to use such methodologies in its development. During the period when the work was carried out, the revised version of the caution and legal rights (see Ch. 3.3 and Appendix 3b) was in use; the current caution had not yet been introduced.

Assuming that the information about the caution and legal rights would be more accessible if its complexity were reduced, the first task was to rewrite the *NDP* so that, in terms of its 'Reading Ease' (Flesch, 1948), it was simpler. Previous studies (Ferguson and Douglas, 1970; Gibbons, 1990; Gudjonsson, 1990a, 1991a; Gudjonsson et al., 1992; see Ch. 3.5) suggested some directions for the development of a new version of the *NDP*. First, the language needed to be changed. Since some of the longest sentences appeared most difficult to understand, it was important to reduce average sentence length. As has subsequently been shown, however, in relation to the current

and draft cautions (see Ch. 3.4), simply condensing the material is not necessarily helpful. As far as possible, the material also needed to be translated into the language which people use in everyday life, with terminology which was confusing or ambiguous (such as 'in exceptional circumstances' and 'right') removed. Secondly, some attempt had to be made to address the evidence that the majority of suspects (66%, N=171) reported that they did not read the written information (Gudjonsson et al., 1993). A number of reasons, including limited reading skills (Gudjonsson et al., 1993) and other psychological disadvantages, such as anxiety (Irving, 1980; Irving and McKenzie, 1989; Gudjonsson et al., 1993), might contribute to this finding. However, since presentation affects the ease with which material is understood and retrieved from text, particularly for less able readers (Hartley, 1994), comments from the participants in Ch. 3 suggesting that the revised *NDP* was both confusing and unattractive indicated the need for a change in the format.

The aims of this study, then, were, first, to devise an experimental version of the *NDP* and, secondly, to evaluate its complexity in terms of its R.E. (Flesch, 1948). It was expected that the experimental *NDP* would be less complex than both the original (see Ch. 3.2 and Appendix 3a) and revised (see Ch. 3.3 and Appendix 3b) versions.

6.2.2 METHOD

Developing the experimental *NDP*

The development of the experimental *NDP* involved several stages. An initial draft was prepared by translating the revised version of the caution (which is worded exactly the same as the original caution) and the four rights (see Appendix 3b) into everyday language. Instead of statements of the rights, a question format was adopted. It was expected that, due to a vulnerability to acquiescence, particularly among people who are intellectually disadvantaged (Clare and Gudjonsson, 1993; Heal and Sigelman, 1995; Sigelman et al., 1980, 1981a, b), suspects would tend to answer 'yes' to any question in the form 'do you want...?'. A tendency to acquiescence would therefore increase the likelihood that a suspect would exercise his/her rights.

There were two major changes to the format in which the information was presented. First, there was a considerable increase in the amount of information to be presented

orally to detained persons by Custody Officers. Secondly, based on a comparison of the format of Form 3053 and the existing relevant literature on preparing text (Hartley, 1978, 1985, 1990; Waller, 1984; Wright, 1988) the layout of the written information was changed so that it comprised a *further information leaflet* and the *information card.* It was intended that a card (which would be easier to understand and more attractive than Form 3053) would be given to each suspect before s/he was taken to a cell to await interviewing

An 'iterative process' (Waller, 1984) was used to refine the initial draft. This involved submission to the Home Office for legal advice about the proposed language, and for comments on the proposed format, redrafting, piloting with a small number of 'general population' participants to obtain a user perspective, further redrafting, and resubmission to the Home Office. The material was then submitted for comments to Professor James Hartley of the Department of Psychology, University of Keele, an expert in the preparation of text. It was then redrafted and resubmitted for a final round of comments.

Assessment of complexity

Despite the limited number of words, the Flesch Formula (Flesch, 1948) was used to provide a 'Reading Ease' (R.E.) score as a 'rough and ready' measure of the complexity of the two written sections (the *further information* and the *card*). No experimental literature could be found on the validity of this type of analysis for material intended for oral presentation (the *oral information*). In previous studies, though (Gudjonsson, 1990a, 1991a; see Ch 3.2 and Ch. 3.3), the R.E. results were consistent with those obtained when the written material was read out to participants, suggesting that this measure is helpful in predicting participants' difficulties in recalling and understanding oral information. The entire experimental *NDP* was therefore analysed.

At the time when this work was carried out, no computer software was readily available, so the R.E. scores were calculated by hand, using Flesch's (1948) formula:

R.E. = 206.835 – 0.846 *wl* – 1.015 *sl*, where

wl is the average number of syllables in each 100 word sample

sl is the average sentence length of the samples

with adjustments to take into account the limited length of some of the sections. Ley's (1977) translation of the scores was then used to provide *rough estimates* of the level of intellectual ability (Full Scale IQ) required for understanding the material and the proportion of the population who would therefore be expected to comprehend it. Table 6.2.1 shows Ley's (1977, p.20) interpretation of R.E. scores, together with the description of style provided by Flesch (1948).

Table 6.2.1 Ley's (1977) interpretation of Flesch scores

Flesch score	Description of style	Percentage who would understand	IQ required for comprehension
91 – 100	Very easy	90%	81+
81 – 90	Easy	86%	84+
71 – 80	Fairly easy	80%	87+
61 – 70	Standard	75%	90+
51 – 60	Fairly difficult	40%	104+
31 – 50	Difficult	24%	111+
0 – 30	Very difficult	4.5%	126+

6.2.3 RESULTS

Final version of the experimental *NDP*

The final version of the experimental *Notice to Detained Persons* is shown as Appendix 3c. The wording is repeated in Table 6.4.1. It comprised:

(i) an extended section for Custody Officers to read out to suspects in police detention (the *oral information*);

(ii) a laminated card, outlining the main points of the oral information, to be given to suspects before they were taken to their cells (the *information card*);

(iii) a leaflet to which suspects could refer for more detailed information about the rights already described and to find out about the right to a copy of the Custody Record (the *further information leaflet*).

Complexity of the experimental *NDP*

Table 6.2.2 shows the R.E. scores for the caution (presented in the *oral information*), the overall scores for each of the three sections of the experimental *NDP*, and the scores for

each of the four rights in the *leaflet*. It also shows the scores for the caution in the original and revised versions, and for the four rights overall, and separately, in each of these versions.

Table 6.2.2: 'Reading Ease' (R.E.) scores for the experimental *NDP,* and for the original and revised versions

	R. E. score
Caution	
• Original and Revised *NDP* (the caution is identical in these two versions)	61
• Experimental *NDP*	90
Sections of the experimental *NDP*	
• *Information card*	84
• *Oral information* (excluding the caution)	84
Original *NDP*	
• **Overall**	50
• The right to have someone informed of your detention	48
• The right to legal advice	40
• A copy of the Codes of Practice	53
• A copy of the Custody Record	50
Revised *NDP*	
• **Overall**	56
• The right to have someone informed of your detention	52
• Free legal advice	66
• The right to consult the Codes of Practice	37
• The right to a copy of the Custody Record	49
Experimental *NDP: further information leaflet*	
• **Overall**	77
• Telling someone that you are at the police station	75
• Getting a solicitor to help you	78
• Looking at the Codes of Practice	88
• Having the Custody Record	75

Overall, the R.E. score of the experimental *NDP* was 80 ('fairly easy', see Table 6.2.1) suggesting that, as expected, it was considerably less complex than the original or revised versions. Some sections appeared easier than others: the R.E. of the caution was 90 ('easy', Table 6.2.1). Similarly, the *oral information* (excluding the caution) and the *information card*, both of which had R.E. scores of 84, were 'easy'. According to Ley's (1977) estimate, all three would be understood fully by people with a Full Scale of 84 (Low Average) or above (Table 6.2.1).

As Table 6.2.2 shows, the *further information leaflet* was a little more difficult. As in previous versions of the *NDP*, some parts were more complex than others: for example, 'Looking at the Codes of Practice' had an R.E. of 88 compared with 75 for 'Getting a solicitor to help you' and 'Having the Custody Record'. The overall score of the *further information leaflet* was 77, suggesting it was 'fairly easy' and would be understood fully by 80 per cent of the general population (Table 6.2.1).

6.2.4 DISCUSSION

Using an 'iterative process' (Wright, 1988), an experimental version of the *Notice to Detained Persons* was developed. It was then assessed using a 'Reading Ease' analysis (Flesch, 1948). Though variation was found within and among the different sections of the material, overall, as expected, the experimental version was considerably less complex than both the revised version then in use and the original version. According to Ley's (1977) interpretation of R.E. scores, it should have been understood in its entirety by men and women with a Full Scale IQ score in the Low Average range or above, that is, to eight in every ten of the general adult population. Importantly, given that the mean level of intellectual ability of suspects in police detention lies within the same range (Full Scale I.Q.: 82, Low Average, Gudjonsson et al., 1993), the experimental version appeared suitable for the target population.

These encouraging findings were supported by an analysis of three different sections (600 words in all) of a popular daily newspaper ('The Sun'; average R.E.: 69; range: 64-73): the experimental *NDP* was less complex! Nevertheless, some of the sentences remained very long (for example, 'If the police cannot get in touch with any of the first three people you want told that you are at the police station, the Custody Officer (the police officer who is in charge of you while you are at the police station) may ask you for the names of other people' (sentence 28 in the *further information leaflet*)). Ideally, such sentences should have been reduced but, given the formula's dependence on syllables and the need to retain legal terminology (such as 'solicitor', 'Custody Officer'), the scope for further simplification appeared to be limited.

Whilst the association between the results of readability formulae and people's understanding has already been noted (Bormuth, 1966; Jackson, 1995; Ley, 1977; Masson and Waldron, 1994; Sherr, 1986; see Ch. 3), the widespread criticisms of these

formulae (Jackson, 1995; Owen, 1996; Rock, 1999a,b; Scott, 1996) indicated that supplementary data were required. The aim was to provide sufficient information to enable the Royal Commission on Criminal Justice to decide whether or not, in terms of its overall remit, the experimental version was 'good enough' to recommend for further development. Three additional exploratory studies, using experimental participants, were therefore carried out.

6.3 STUDY 10: THE EFFECT ON KNOWLEDGE AND UNDERSTANDING OF DIFFERENT SECTIONS OF THE EXPERIMENTAL *NOTICE TO DETAINED PERSONS*

6.3.1 INTRODUCTION

The experimental version of the *NDP* comprised three sections (see Appendix 3c). The aim of this study was to examine whether these three sections were necessary, or whether the format might be simplified. Using the psychological methodologies first described in Ch. 3, the impact on knowledge and understanding of the verbal information alone was compared with additional access to *either* or *both* sections of the written material. It was expected that access to the *further information leaflet* and/or the *information card* would enhance performance.

6.3.2 METHOD

Participants

In order to improve the ecological validity of the experimental studies, efforts were made to recruit participants who, like the majority of suspects (Gudjonsson et al., 1993), were of below average intellectual ability. A convenience sample of one hundred volunteer participants (64 men and 36 women) was found through 'job-finder' and work-experience centres or basic skills clubs. Though none of the participants was a person with Down Syndrome or some other phenotype associated with a learning disability and the centres were not specifically designated for people with learning disabilities, many of those who took part volunteered information indicating that they had attended schools for pupils with 'special needs'. All the participants were 'adults' in terms of the criminal justice system (i.e. aged ≥ 17 years: mean age: 33.23 years; s.d.: 10.53; range: 17-69 years) and were fluent in English.

Measures

1. *Intellectual functioning*: to ensure that the sample included participants who were intellectually disadvantaged, Full Scale IQ was assessed using all eleven sub-tests of the Wechsler Adult Intelligence Scale-Revised (WAIS-R, Wechsler, 1981).

2. *Reading ability*: since some of the participants had received 'special' education or were attending basic skills centres, reading ability was assessed using the Schonell Graded Reading Test (Schonell and Goodacre, 1974).

3. *Knowledge of the caution and legal rights*: as described fully in Ch. 3.2.2, knowledge of the experimental NDP was assessed through recall or paraphrasing of each item of the information. The effectiveness of the *NDP* was examined by comparing knowledge before (Initial Knowledge) and after (Knowledge After) access to the information. It should be noted that there were sixteen items in the experimental version, compared with only thirteen in the original.

4. *Understanding of the caution and legal rights*: to assess understanding, the eight-item questionnaire, first described in Ch. 3.3.2 (and see the lower part of Figure 6.3.2) was used. Each item was read, in turn, to the participant, who was asked to respond 'yes' or 'no'. The number of correct responses was calculated.

Procedure

The participants were recruited and assessed by Ms. Philippa Cross, the Research Assistant involved in Study 2 (Ch. 3.3.2) and Studies 6 (Ch. 5.3), 7 (Ch. 5.6) and 8 (Ch. 5.9). At recruitment, each person was allocated randomly to one of four groups and tested individually in a quiet room at the centre/club he or she was attending.

First, the test of reading ability was carried out. Next, Initial Knowledge of the caution and legal rights was elicited (using the wording described in Ch. 3.2.2) and written down verbatim. Then, the experimental version of the caution, together with the information intended for the Custody Officer to present orally (the *oral information*), was read aloud. After this, the procedure differed for each of the four groups of 25 persons:

Group 1 – were not offered access to either the *information card* or the *further information leaflet*,

Group 2 – had the opportunity to read/were read the *information card*,

Group 3 – had the opportunity to read/were read the *further information leaflet*,

Group 4 – had the opportunity to read/were read the *information card* and the *further information leaflet*.

For Groups 2, 3, and 4, a criterion raw score of 74/100 (i.e. a reading accuracy age of 12 years 5 months) on the GWRT was adopted. This is similar to the reading accuracy age criterion adopted in the study of the original *NDP* (see Ch. 3.2.2). For participants who did not achieve this criterion, the written material (the *information card* or/and the *further information leaflet*) were read out whilst they followed the text; otherwise, they read it for themselves.

After this, the assessment of intellectual ability was begun. Approximately 30 minutes after the presentation of the *NDP*, Knowledge After was elicited (as described in Ch. 3.2.2), and the responses were again written down verbatim. Then, the questionnaire was presented orally (as described in Ch. 3.3.2). Finally, the assessment of intellectual ability was completed.

Scoring

Typed transcripts of the responses were prepared by Ms. Cross and scored by me. *Initial Knowledge* and *Knowledge After* were scored by allocating one point to each item recalled from the oral information (maximum: 16 points). Regardless of the number of times it was reported, each item was scored only once. *Understanding* was scored by counting the number of correct responses (maximum: 8) on the questionnaire.

6.3.3 RESULTS

Participant characteristics

Table 6.3.1 shows the chronological ages, Full Scale IQ scores, and raw reading accuracy scores of the four groups (1, 2, 3, 4). The mean scores were compared statistically by calculating *t*-values; these are given in the last column.

Table 6.3.1: Characteristics of the four groups of participants

	Group 1			Group 2			Group 3			Group 4			*t**
	mean	s.d.	range	mean	s.d.	range	mean	s.d.	range	mean	s.d.	range	
Chronological age	33.0	10.3	20 - 56	32.2	10.6	17 - 69	34.0	9.6	19 - 55	33.7	11.5	17 - 59	0.59
Full Scale IQ	78.0	12.9	61 - 112	80.6	13.1	60 - 120	80.4	19.5	53 - 128	78.8	16.6	61 - 119	0.71
Reading accuracy raw score	59.1	33.2	8 - 99	64.4	24.9	21 - 97	61.2	26.1	23 - 100	57.0	30.5	0 - 99	0.91
No. of participants	25			25			25			25			

* *t*-tests for independent samples with equal variance were carried out on all the pairs to compare the means. No values were found to be statistically significant (2-tailed, df = 48)

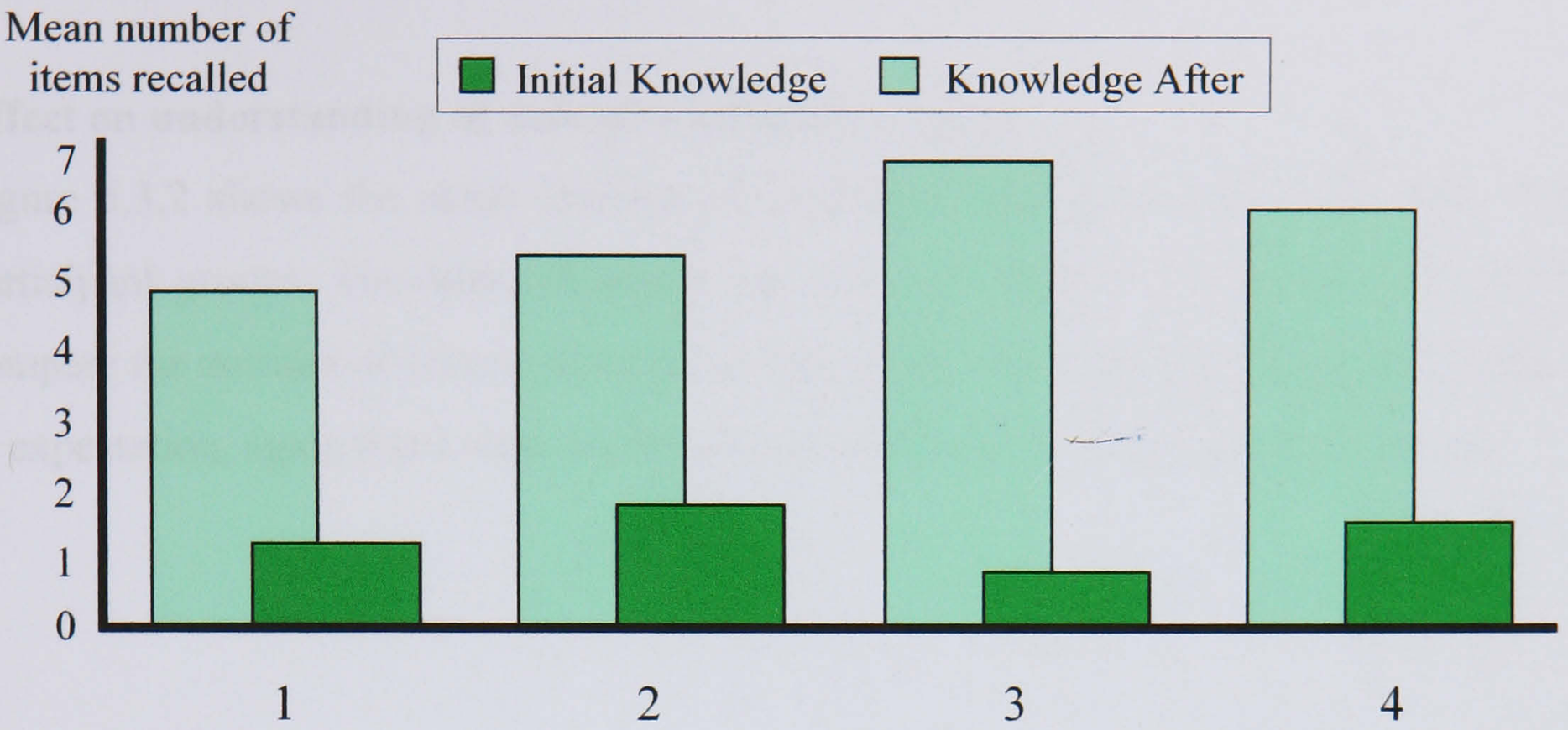
There were no significant differences on any of the scores, indicating that, at least with regard to chronological age, Full Scale IQ, and reading accuracy, the groups were homogeneous.

Two analyses were then carried out.

Effect on knowledge of access to different sections

Figure 6.3.1 shows the mean number of items paraphrased correctly, or recalled, by each of the four groups before, and following, access to one or more sections.

Figure 6.3.1: Knowledge of the caution and rights among the four participant groups before (Initial Knowledge) and after (Knowledge After) access to the experimental *NDP*



Participant group:		Initial Knowledge	Knowledge After	Z value*
1. *oral information*	Mean	1.20	4.76	4.17
	Range	0 – 3	0 – 11	
2. *oral information* and *information card*	Mean	1.76	5.32	3.99
	Range	0 – 4	0 – 11	
3. *oral information* and *further information leaflet*	Mean	0.80	6.64	4.21
	Range	0 – 3	0 – 16	
4. *oral information, card* and *leaflet*	Mean	1.52	5.96	4.20
	Range	0 – 4	1 – 16	

* The Wilcoxon Signed Ranks Test (for large samples) was used to compare Initial Knowledge and Knowledge After for each participant group. All the results were significant ($p<0.001$).

Statistical analysis using the Wilcoxon Signed Ranks Test (see Appendix 7 for details) showed that access to any section of the experimental *NDP* improved the performance of all four groups very significantly.

Knowledge before access (Initial Knowledge) among the different participant groups was compared statistically using the Mann-Whitney test (see Appendix 7 for details). Initial Knowledge was lower among Group 3 than Group 2 ($U = 182.5$, $Z = 2.63$, $p \leq 0.01$); otherwise, there were no significant differences. The Mann-Whitney test was also used to compare knowledge among the different participant groups after access to the

NDP; all the comparisons were non-significant. Contrary to expectation, therefore, no significant benefit was conferred by additional access to the *information card* and/or the *information leaflet*.

Effect on understanding of access to different sections

Figure 6.3.2 shows the mean number of questions answered correctly by each of the participant groups. The Mann-Whitney test (see Appendix 7 for details) was used to compare the number of correct answers among the different participant groups. Contrary to expectation, again there were no significant differences between the four groups.

Figure 6.3.2: Mean number of correct responses by the four participant groups to the 8-item questionnaire

	Participant group			
	1 *oral information*	2 *oral info., information card*	3 *oral info., further info. leaflet*	4 *oral info., card, leaflet*
Mean correct	6.4	6.6	6.1	6.4
Range	4 – 8	3 – 8	4 – 8	4 – 8

The questions were as follows (correct response in brackets):

1. Do you have to answer the police questions even if you don't really want to? (No)
2. If you say anything to the police and your case goes to Court, can the police tell the Court what you've said to them? (Yes)
3. Is it true that you only need a solicitor if you've done the crime you're being questioned about (i.e. you're guilty)? (No)
4. Do you need money in order to have a solicitor to help you at the police station? (No)
5. If you ask the police to tell your family or someone who cares about you that you're at the police station, will they normally contact them? (Yes)
6. Do you have to give the police money before they'll contact someone who cares about you? (No)
7. If you say anything to the police, do you have to tell them the truth? (No)
8. If you don't want a solicitor to help you or someone told that you're at the police station straightaway, are you allowed to change your mind later? (Yes)

6.3.4 DISCUSSION

Consistent with the findings of the R.E. analysis (see Ch. 6.2), presentation of the *oral information* alone resulted in a very marked improvement in participants' knowledge of the caution and legal rights. Unexpectedly, though, additional access to the *information card* and/or the *information leaflet* did not enhance performance.

The implications of this exploratory study seemed clear: the *oral information* alone sufficed. Nevertheless, a decision was made that it would be premature, at this stage, to omit the other sections. First, the finding that, despite its relative complexity (see Ch. 6.2), access to the *information leaflet* was of some benefit, at least in terms of knowledge, suggested that this part merited further investigation. Secondly, particularly for people who needed the written sections read to them, the methodology adopted may have made overwhelming demands on working memory (Baddeley, 1990). It would have been preferable if the possible impact of access to the *information card* and/or the *information leaflet* on knowledge and understanding had been assessed after exposure to each of the relevant sections in turn. Finally, the generalisability of the findings from this study was uncertain. In contrast with some of the observed 'booking in' procedures by Custody Officers (Brown et al., 1992; McConville et al., 1991), the information about the caution and legal rights was presented slowly, clearly, and completely. In the real-life setting of a police station, written material, expanding and reiterating the main points of the *oral information*, might be helpful – at least for those who can read.

These considerations suggested that, for the moment, all three sections should be retained and developed further.

6.4 STUDY 11: UNDERSTANDING OF THE EXPERIMENTAL *NDP*

6.4.1 INTRODUCTION

The findings of the study reported in Ch. 6.2, based on analysis of its 'Reading Ease' (Flesch, 1948), suggested that the information about the caution and legal rights presented in the experimental *Notice to Detained Persons* would be understood by people who are intellectually disadvantaged, such as suspects (Gudjonsson et al., 1993). However, as has already been noted (see Ch. 6.1.1), there has been considerable

criticism of measures of readability formulae (Jackson, 1995; Owen, 1996; Rock, 1999a,b; Scott, 1996), particularly when they are used on their own. To supplement the previous study, the experimental participants' understanding of the information was assessed using the psychological methodologies described in Ch. 3. From the 'R.E.' analysis, it was expected that the *further information leaflet* would be the most difficult section.

6.4.2 METHOD

Participants

The participants were the same men and women who had been allocated to one of four groups in the previous study; details of each of these groups are given in Table 6.3.1. Since there were no significant differences between the chronological ages, Full Scale IQ scores, and reading accuracy raw scores of the groups, for the purposes of this study, they were treated as a single sample of one hundred persons. The sample had a mean Full Scale IQ score on the WAIS-R (Wechsler, 1981) of 79.5 (s.d.: 15.8) and a mean reading accuracy raw score on the Schonell Graded Word Test (Schonell and Goodacre, 1974) of 60.4 (s.d.: 28.9)

Measures and Procedure

Since the paraphrased recall and questionnaire methodology have already described in detail (Study 2, Ch. 3.3.2; also Study 10, Ch. 6.3.2), the Measures and Procedure are combined here. Participants were seen individually, three to four days after their involvement in the previous study.

Two measures of understanding were used:

1. *Paraphrased recall of the caution and legal rights as discrete elements*: each person, regardless of his or her reading accuracy score, was given a copy of the entire experimental *NDP*, so that s/he could follow as, first, the *oral information* section was read aloud. Then each sentence was read out in turn and participants were asked to explain its meaning. The responses were written down verbatim. The same procedure was repeated for the *further information leaflet* and the *information card.*
2. *Questionnaire*: the questionnaire from the study reported in Ch. 6.3 was used again.

Scoring

Typed transcripts were prepared by Ms. Cross and scored by me. They indicated that some participants were reluctant to paraphrase information they regarded as self-explanatory, and needed prompting. *Paraphrased recall* was scored using a two-point system, with one point allocated to each sentence which was demonstrably understood (for example, by paraphrasing or providing a well-explained and relevant response to a question contained in the sentence). No point was given if a participant simply repeated the exact words, refused to paraphrase without providing any indication of understanding, or simply answered a sentence containing a question with a one-word response. The *questionnaire* was scored as described in Ch. 6.3.2.

6.4.3 RESULTS

Two analyses were then carried out.

Paraphrased recall among the participants

Table 6.4.1 shows the percentage of participants who demonstrated understanding of each sentence of the experimental version.

Table 6.4.1 The percentage of participants who understood each sentence fully (N = 100)

Oral information	
1. You do not have to say anything to the police if you do not want to.	81%
2. If you do talk to the police, or answer their questions, they can use what you have said to help them find out if you or anyone else has done a crime.	48%
3. What you say may also be used in Court.	57%
4. Do you want a solicitor to help you while you are at the police station?	73%
5. A solicitor has nothing to do with the police	77%
6. You do not have to pay money to talk to a solicitor.	89%
7. The police will help you find a solicitor if you do not know one.	85%
8. Do you want your family or someone who cares about you to know that you are at the police station?	83%
9. You do not need any money to pay for the police telling someone where you are.	84%
10. Do you want to look at the Codes of Practice?	56%
11. The Codes of practice is a book.	55%
12. It tells you what the police are and are not allowed to do while you are at the police station.	72%
13. If you do not want a solicitor right now, or you do not want someone told that your are at the police station right now, or you do not want to look at the Codes of Practice right now, you can change you mind later.	70%
14. If you change your mind later, tell the police and they will help you.	69%
15. I am now going to give you a card which tells you the main things I have said (*Information For People Who Have Been Arrested By The Police*).	55%
16. There is some more information in the leaflet (*Further Information For People Who Have Been Arrested By The Police*) on the desk.	69%
Information card	
1. Ask the police if you want a solicitor to help you while you are at the police station.	84%
2. It will not cost you anything.	95%
3. Ask the police if you want your family or someone else who cares about you to know that you are at the police station.	91%
4. It will not cost you anything	89%
5. Ask the police if you want to look at the Codes of Practice (the book which tells you what the police are and are not allowed to do while you are at the police station).	71%
Further information leaflet	
1. You must be allowed to talk to a solicitor at anytime, day or night, when you are at a police station.	82%
2. You do not have to pay any money to speak to a solicitor.	84%
3. You can talk to a solicitor on the telephone without the police knowing what you are telling him or her.	76%
4. A solicitor may come to see you at the police station.	85%
5. Most of the time, the police are not allowed to ask you questions until you have had the chance to talk to a solicitor.	64%
6. You can also ask for a solicitor to be in the room with you when the police ask you questions.	75%
7. If you want a solicitor, tell the Custody Officer (the police officer who is in charge of you while you are at the police station).	74%
8. The police will help you get in touch with a solicitor.	88%

continued ...

Table 6.4.1 continued

9. If you do not know a solicitor or you cannot get in touch with your own solicitor, there is a person called the duty solicitor.	72%
10. The police will help you get in touch with him or her.	86%
11. He or she is nothing to do with the police.	81%
12. Or you can ask for a solicitor who lives nearby.	82%
13. If a solicitor does not turn up, ask the police to get in touch with him or her again.	77%
14. The police can ask you to give blood samples, urine samples, and samples of your breath before you have talked to a solicitor.	70%
15. The Road Traffic Act, 1988, is the law which allows the police to ask you for these samples.	49%
16. There are some very special times when the police can ask you questions before you have talked to a solicitor.	42%
17. Information about these very special times is given in the Codes of Practice.	56%
18. This is the book which tells you what the police are and are not allowed to do while you are at the police station.	70%
19. If you want to look it up, it is in paragraph 6.6 of Code C of the Codes of Practice (page 48).	64%
20. There are also some very special times when the police will not let you speak to a solicitor straight away.	49%
21. Information about these very special times is given in the Codes of Practice.	64%
22. If you want to look it up, it is in Annex B of Code C of the Codes of Practice (pages 71 – 73).	73%
23. You can ask the police to tell your family or someone else who cares about you that you are at the police station.	89%
24. You do not have to pay money for the police to get in touch with someone.	85%
25. The police will get in touch with someone as soon as they can.	76%
26. If the police cannot get in touch with the first person you want to know that you are at the police station they will ask you for the name of someone else.	85%
27. If they cannot get in touch with this second person, they'll ask you for the name of someone else.	80%
28. If the police cannot get in touch with any of the first three people you want told that you are at the police station, the Custody Officer (the police officer who is in charge of you while you are at the police station) may ask you for the names of other people.	43%
29. But the Custody Officer does not have to do this.	47%
30. There are some very special times when the police will not allow you to get in touch with anyone.	54%
31. Information about these very special times is given in the Codes of Practice.	64%
32. If you want to look it up, it is in Annex B of Code C of the Codes of Practice (pages 71 – 73).	72%
33. The Codes of Practice is a book which tells you what the police are and are not allowed to do while you are at the police station.	72%
34. If you ask the police, they will let you look at the Codes of Practice.	76%
35. But you are not allowed to look at the Codes of Practice for such a long time that it holds up the police in finding out if you have done a crime.	51%

continued ...

Table 6.4.1 continued

36. Everything that happens to you when at the police station is written down.	68%
37. The paper on which it is written is called the Custody Record.	68%
38. When you leave the police station, you can ask for a copy of the Custody Record.	77%
39. If you do not want to ask for it, your solicitor or someone you know well can ask for it instead.	80%
40. The police have to give you a copy of the Custody Record as soon as they can.	64%
41. You are allowed to ask the police for a copy of the Custody Record at any time in the 12 months (that is, the year) after you leave the police station.	64%
42. If you ask more than 12 months (a year) after, the police will not give you a copy of the Custody Record.	71%

Overall, each sentence of the experimental *NDP* was understood by a mean of 72% of the participants. The *further information leaflet* contained the most difficult sentences. In contrast, every sentence (excluding the caution) in the other two sections was demonstrably understood by at least 55 per cent of the participants. Further statistical analysis, using Spearman's Rank-Order Correlation Coefficient (see Appendix 7 for details), showed that though there was a positive relationship between understanding and intellectual ability ($r = 0.408$; $p<0.01$, 1-tailed), there was variation between the sections. Virtually full understanding of both the *oral information* and the *information card* was achieved by all the participants of Low Average ability (Full Scale IQ range: 80-89). In contrast, the highest level of understanding of the *further information leaflet* was achieved by the participants of High Average ability (Full Scale IQ range: ≥ 110).

Questionnaire responses among the participants

Table 6.4.2 shows the percentage of participants responding correctly to each of the questionnaire items (details of the items are given in Figure 6.3.2).

Table 6.4.2 Responses to the questions about the caution and legal rights by the whole group after access to the experimental *NDP*

Question	1	2	3	4	5	6	7	8
% of participants giving correct answer (N = 100)	84%	84%	60%	92%	97%	98%	30%	89%

With the exception of questions 3 and 7, all the questions were answered correctly by at least 80 percent of the participants. Using Spearman's Rank-Order Correlation Coefficient (see Appendix 7 for details), it was found that correct responding was associated with intellectual ability ($r = 0.674$; $p<0.01$, 1-tailed) so that the questionnaire was most difficult for the most intellectually disadvantaged persons.

6.4.4 DISCUSSION

The aim of this study was to examine understanding of the experimental *NDP* among the whole group of participants. Again, the findings were encouraging, particularly as the mean level of intellectual ability of the group was similar to that of suspects in police detention (Gudjonsson et al., 1993).

Using paraphrased recall as a measure of understanding, each sentence was understood by a mean of almost three-quarters (72%) of participants. This was much better than the 59% achieved by participants of similar intellectual ability in Gudjonsson's (1990a, 1991a) study of the original version though, contrary to expectations, the extent of this improvement was not statistically significant (*Z*-test; see Appendix 7 for details). Nevertheless, with only five exceptions, all thirty-eight sentences were explained or paraphrased correctly by more than half of those who took part. All the participants who were not intellectually disadvantaged (that is, had FSIQ scores of ≥ 76) understood the right to legal advice - the most important practical information from the experimental version - with more than nine out of ten (92%) explaining, or paraphrasing, this right from the *oral information* alone.

As expected from the analysis of its 'Reading Ease' (see Table 6.2.2, Ch. 6.2), the *further information leaflet* appeared to be the most difficult section for the participants to understand. It contained all the sentences which were explained or paraphrased correctly by fewer than 50 per cent them. In addition, in contrast with both the *oral information* and the *information card*, which were understood virtually in their entirety by men and women of Low Average intellectual ability (FSIQ: 80-89), understanding continued to improve as ability increased. The highest level of understanding of the leaflet was attained by the most intellectually advantaged participants (in the High Average range, FSIQ: ≥110).

On the questionnaire, six of the eight items were answered correctly by at least four out of five participants. In contrast, question 3 seemed puzzling to the most intellectually disadvantaged persons (see Table 6.4.2). Though direct comparison was not possible because of differences between the participants in the two studies, the same question was also very difficult for the 'learning disabilities' group in the investigation of the understanding of the revised NDP (Study 2, Ch. 3.3). It is likely that this reflects its complex construction and content. As before, though, the lowest level of correct responding, was obtained on question 7 (see Table 6.4.2). In the earlier study (see Ch. 3.3), it was argued that the poor performance by both people with learning disabilities and their 'general population' counterparts reflected limited awareness of the significance of the information about the caution and legal rights in the *NDP*. Such an explanation would certainly be consistent with the findings from the 'learning disabilities' group in Study 5 (Ch. 4.3). However, informal comments made during this study suggested that, in part, the difficulties arose simply from the wording of the question: several participants were uncertain about whether they were being asked about a legal or a personal issue (for example, one person replied: 'yes, I would always tell the truth to the police, but I suppose you don't have to'). These responses indicated that the question itself required further development.

Since the task was to investigate the possibility that the information to detained persons could be simplified without losing their legal acceptability, the findings of this, and the previous, study were interpreted liberally. In contrast, a more critical approach was taken to the final study in the series.

6.5 STUDY 12: COMPARING THE EXPERIMENTAL AND ORIGINAL OR REVISED VERSIONS OF THE *NOTICE TO DETAINED PERSONS*

6.5.1 INTRODUCTION

As already noted, there are no agreed criteria for the acceptability of legal material (Penny Letts, 1999, personal communication). However, the importance of the *NDP* suggests that any new version of the caution and legal rights ought *at least* to be more accessible than the original version, or the current version which, potentially, it would

replace. Whilst the findings of the studies reported in this chapter have been encouraging, they do not address this crucial issue. It is of particular salience since it appears, from the limited experimental evidence available, that simplifying the wording of the legal rights of suspects does not necessarily improve knowledge and understanding of the information (Ferguson and Douglas, 1970; Manoogian, 1978, cited by Grisso, 1981).

The purpose of this study of the *NDP*, which used existing data, was two-fold:

(i) to compare the impact on knowledge of the caution and legal rights of the experimental or original versions. It was expected that the 'experimental' participants would benefit from access to the *NDP* more than their counterparts;

(ii) to compare the impact on understanding of the material in the experimental and revised versions of the *NDP*. Again, it was expected that the performance of the 'experimental' participants would be better than that of their peers .

6.5.2. METHOD

Participants

Many of the participants involved in the earlier studies of the experimental NDP were intellectually disadvantaged (see Ch. 6.3.2 for details). However, in contrast with some of the men and women who took part in Study 1 (Ch. 3.2) or Study 2 (Ch. 3.3), no one fulfilled the criteria for a learning disability (see Methodological Considerations, Ch. 2.4.1). So, instead, the comparisons involved the 'general population' groups from the original or revised versions, and the 42 'experimental' participants (27 men and 15 women) who were not intellectually disadvantaged (that is, had Full Scale IQ scores ≥ 80).

Table 6.5.1. shows the mean Full Scale IQ scores, standard deviations, and ranges of the groups involved in the comparisons of the experimental, original or revised versions of the NDP. The mean scores were compared statistically by calculating *t*-values. They did not differ significantly, suggesting that the Full Scale IQ scores of the groups were comparable.

Table 6.5.1 Characteristics of the groups involved in the comparisons of the experimental, original or revised versions of the *NDP*

	Experimental			Original			Revised		
	mean	s.d.	Range	mean	s.d.	range	mean	s.d.	range
FSIQ	94	13.4	80-128	99	7.2	83-111	98.6	11.2	88-128
No. of participants	42			20			17		

t-tests for independent samples with equal variance were carried out to compare the means:

- Experimental vs. Original: $t = 1.54$, not significant (2-tailed, df = 60)
- Experimental vs. Revised: $t = 1.23$, not significant (2-tailed, df = 57)

Measures and Procedure

Since the methodology has already been described in Study 10 (Ch. 6.3), the Measures and Procedure are combined here. First, the data from the forty-two participants involved in assessing the impact on knowledge of the experimental version (see Ch. 6.3) were rescored. One point was allocated to each of the thirteen items in the original version (shown in Table 3.2.2) which were paraphrased or recalled from any of the three sections of the experimental version before (Initial Knowledge) and after (Knowledge After) access to the information.

Then, data from the same participants' involvement in the investigation of understanding of the experimental version (Study 10, Ch. 6.3) were selected. Since this questionnaire had been used in the evaluation of the revised version (shown in Fig. 6.3.2), no rescoring was needed.

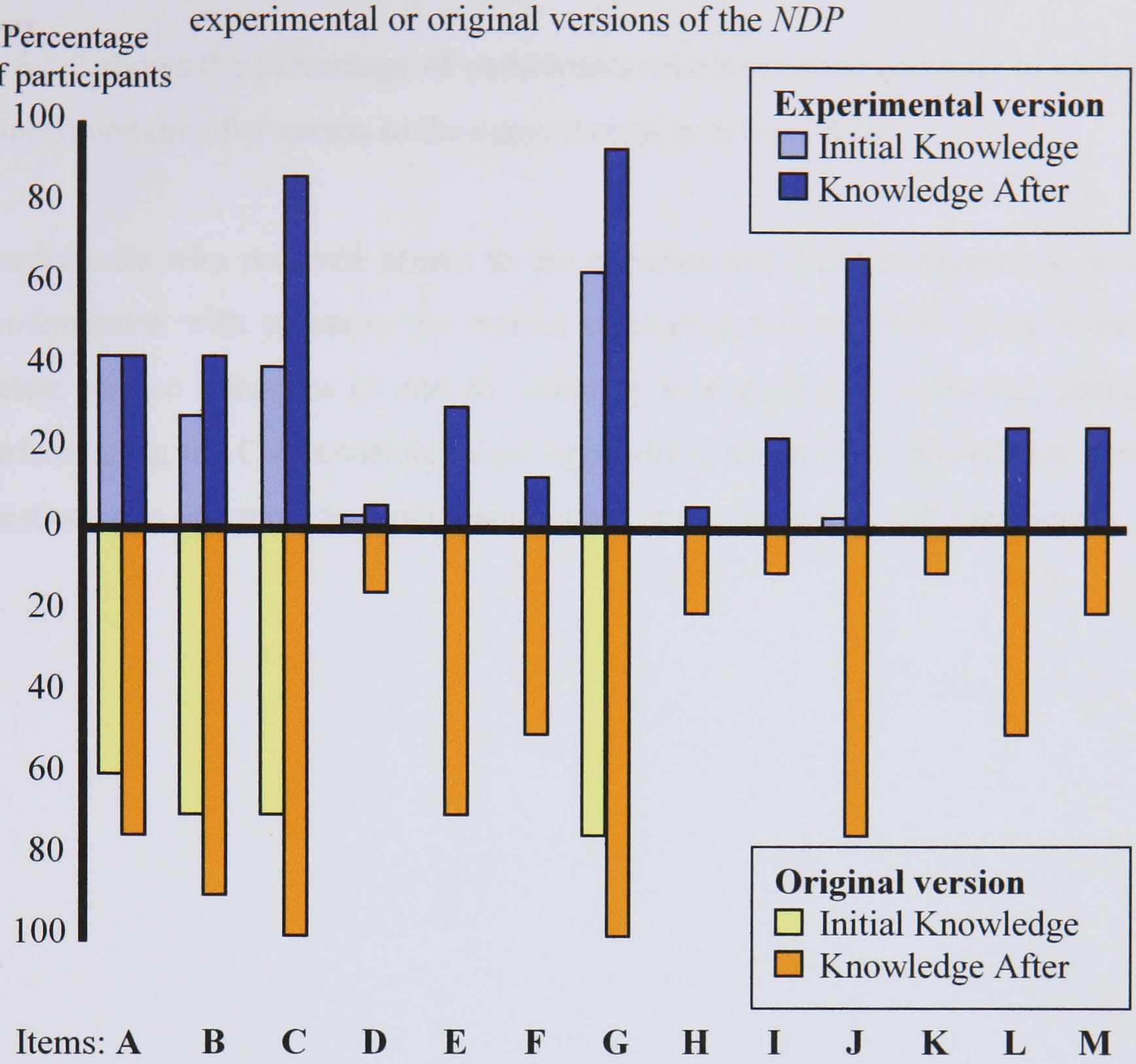
6.5.3 RESULTS

Comparison of the impact on knowledge of the experimental or original versions

Figure 6.5.1 shows the percentage of participants who correctly recalled, or paraphrased, each item of information before, and following, access to the experimental or the original *NDP*.

Statistical comparison using the Chi square test (see Appendix 7 for details) showed that, with the exception of two items (B and C), on which the 'original' group performed better, there were no significant differences in the baseline knowledge of the two groups. For each item, Initial Knowledge and Knowledge After access were compared, using the Binomial or McNemar Test (see Appendix 7 for details). As expected, the experimental version was more effective: knowledge of eight items (C, E, F, G, I, J, L, M) improved significantly, compared with six (C, E, F, G, J, L) for the original. Nevertheless, contrary to expectations, Knowledge After was not higher among the 'experimental' participants. Statistical comparison using the Chi square test (see Appendix 7 for details) was carried out. On eight items, the groups did not differ significantly; on the remaining five (A, B, C, F, L), the performance of the participants involved in the evaluation of the original version was significantly *better* than that of their counterparts.

Figure 6.5.1: Knowledge of the caution and the rights before (Initial Knowledge) and after (Knowledge After) access to the experimental or original versions of the *NDP*



KEY:

Except for the parts in brackets, the wording is that of the information on the second page of the original NDP

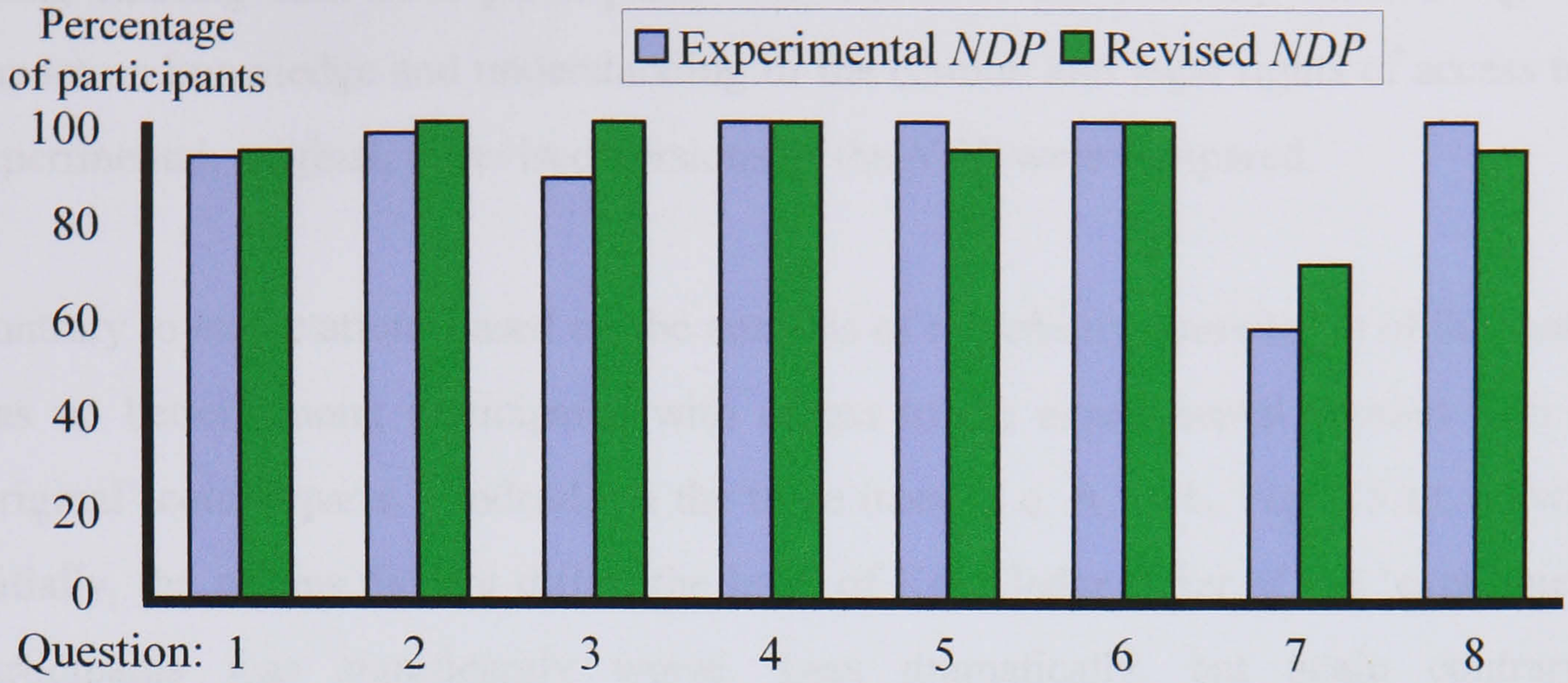
A: If you are asked questions about a suspected offence you do not have to say anything.
B: What you say may be given in evidence.
C: You have the right to have someone informed of your detention.
D: You may on request have one person known to you, or who is likely to take an interest in your welfare, informed at public expense as soon as practicable of your whereabouts.
E: If the person you nominate cannot be contacted you may choose up to two alternatives.
F: If they (the two alternatives) too cannot be contacted the Custody Officer has discretion to allow further attempts until the information has been conveyed.
G: (You have) the right to legal advice.
H: You may at any time consult and communicate privately, either in person, in writing or on the telephone, with a solicitor.
I: Under certain circumstances both of the above rights may be suspended for a limited period in accordance with the Codes of Practice.
J: A copy of the Codes of Practice governing police procedures will be made available to you on request.
K: You do not have to exercise any of the above three rights (i.e. C, G and J) immediately.
L: A record of your detention will be kept by the Custody Officer. When you leave police detention or are taken before a Court, you or your legal representative shall be supplied on request with a copy of the Custody Record as soon as practicable.
M: This entitlement (to the Custody Record) lasts for 12 months after your release from police detention.

Comparison of the impact on understanding of the experimental or revised versions

Figure 6.5.2 shows the percentage of participants who responded correctly to each item in the questionnaire after access to the experimental or revised *NDP*.

The participants who received access to the experimental *NDP* performed as well as their counterparts with access to the revised version on two questions (Nos. 4 and 6), and better on two questions (5 and 8). Contrary to expectations, however, statistical comparison using the Chi-square test (see Appendix 7 for details) showed that none of the questions was answered by significantly more of the 'experimental' participants.

Figure 6.5.2: Responses to the questions about the caution and legal rights after access to the experimental or revised versions of the *NDP*



KEY The questions were as follows (correct response in brackets):	No. and % of participants who correctly answered each question		χ^2 value	Fisher exact prob.
	Experimental n=42	Revised n=17		
1. Do you have to answer the police questions even if you don't really want to? (No)	39 93%	16 94%		0.67 n.s.
2. If you say anything to the police and your case goes to Court, can the police tell the Court what you've said to them? (Yes)	41 98%	17 100%		0.71 n.s.
3. Is it true that you only need a solicitor if you've done the crime you're being questioned about (i.e. you're guilty)? (No)	37 88%	17 100%		0.17 n.s.
4. Do you need money in order to have a solicitor to help you at the police station? (No)	42 100%	17 100%		1 n.s.
5. If you ask the police to tell your family or someone who cares about you that you're at the police station, will they normally contact them? (Yes)	42 100%	16 94%		0.29 n.s.
6. Do you have to give the police money before they'll contact someone who cares about you? (No)	42 100%	17 100%		1 n.s.
7. If you say anything to the police, do you have to tell them the truth? (No)	24 47%	12 71%	0.92 n.s.	
8. If you don't want a solicitor to help you or someone told that you're at the police station straightaway, are you allowed to change your mind later? (Yes)	42 100%	16 94%		0.29 n.s.

n.s. Not significant

6.5.4 DISCUSSION

Using existing data from participants who were not intellectually disadvantaged, the impact on knowledge and understanding of the caution and legal rights of access to the experimental, original, or revised versions of the *NDP* were compared.

Contrary to expectations based on the analysis of readability, knowledge of the material was no better among participants with access to the experimental version than their 'original' counterparts. Indeed, on the three items (i.e. A, F, L, Fig. 6.5.1), on which, initially, the groups did not differ, the level of Knowledge After of the 'experimental' participants was significantly worse. Less dramatically, but again contrary to expectations, access to the experimental, rather than the original, *NDP* made no significant impact on understanding.

How can these findings be explained? First, despite their similar mean Full Scale IQ scores, and the well-established relationship between intellectual ability and knowledge and understanding of information about the caution and legal rights, or their equivalent (Cooke and Philip, 1998; Fulero and Everington, 1995; Gudjonsson, 1980, 1981, 1990a, 1991a; Grisso, 1981; Olley and Ogloff, 1993; see Ch. 3.1.2), it is possible that there were important differences between the participants in the studies of the experimental version and the two previous versions. The men and women in this study appeared more socially and psychologically disadvantaged: for example, none had full-time paid employment, many had limited reading skills, and, as will be discussed in the Ch. 7, a significant proportion also had mental health problems and/or had attended schools for children with special needs. These disadvantages may have masked the effect of the experimental version. However, given that, with the exception of two items (B and C), baseline knowledge of the *NDP* did not differ significantly between the 'experimental' participants and their 'original' counterparts, it seems unlikely that this was the main explanation.

More importantly, the readability formula analysis may have been an inadequate indicator of the complexity of the experimental version of the caution and legal rights. This was unexpected, given previous evidence supporting an association between readability and understanding of written information (Bormuth, 1966; Ley, 1977), including legal information (Gudjonsson, 1990a, 1991a; Jackson, 1995; Masson and

Waldron, 1994; Sherr, 1986), particularly for less able readers (Hartley, 1994). In addition, as already noted, in this study, the R.E. of each section of the experimental version was consistent with demonstrated understanding through paraphrased recall. However, in contrast with the way in which it was originally used (Flesch, 1948), readability in this study was assessed from very brief samples of text (i.e. for the *information card*). Moreover, there were major differences in the presentation of the three sections of the experimental version. The information card was intended to be maximally accessible to suspects alone in their cells; in contrast, the further information leaflet was always intended as reference material, probably to be studied with assistance from a legal adviser. It is most likely, though, that the discrepancies reflect the very limited linguistic variables employed by readability formulae (Bormuth, 1966). This suggests that, as Hartley (1994) has argued, an analysis of the complexity of information, using a readability formula, can be no more than a legitimate *starting-point* in devising or amending informational materials. Some forensic linguists (Jackson, 1995; Owen, 1995; Rock, 1999a, b; Scott, 1996), however, would go further, regarding readability formulae as irrelevant. Support for this perspective was obtained from the pattern of findings for the three groups involved in this study. With two exceptions (items I and M), knowledge of the same items improved significantly after access to the experimental and original versions (C, E, F, G, J, L); and correct responding was lowest for the same two items (questions 3 and 7) of the questionnaire measure of understanding after access to the experimental and revised versions. These similarities suggest that some legal concepts, however much they appear to be simplified by changes in word and sentence length, remain very difficult for actual participants.

6.6 GENERAL DISCUSSION

Psychological methodologies were used to develop and evaluate an *experimental* version of the *Notice to Detained Persons* which was intended to enhance the accessibility of the information about the caution and legal rights. The exploratory studies described here involved, first, producing a less complex version, and, secondly, piloting with participants in an experimental situation.

Whilst both knowledge and understanding of the experimental *NDP* remained, as for the original and revised versions, most difficult for the most intellectually disadvantaged

participants, the findings of the initial studies were encouraging. Consistent with previous work (Bormuth, 1966; Jackson, 1995; Gudjonsson, 1990a, 1991a; Ley, 1977; Masson and Waldron, 1994; Sherr, 1986), the results suggested that readability was associated with comprehension and supported Hartley's (1994) view that readability formulae provide a legitimate *starting-point* in revising existing text. On this basis, a number of suggestions were made for the Royal Commission on Criminal Justice (RCCJ) to consider:

- though the oral information section of the experimental *NDP* was much longer than its counterpart in the revised version, taking almost four minutes to present, its effectiveness should be tested in the real-life setting of a police station. This would provide further information about whether, and to what extent, it might be reduced;
- since even adequate oral information about the caution and legal rights may be presented cursorily by Custody Officers (Brown et al., 1992) and/or poorly absorbed and retained by suspects (Gudjonsson et al., 1993; Irving, 1980; Irving and McKenzie, 1989), some written material should remain available to suspects;
- notwithstanding the finding that the further information leaflet appeared to improve participants' knowledge of the material, it was suggested that the information card, which was less complex and seemed more likely to be understood by men and women who were intellectually disadvantaged, should be retained. If it were given to each suspect before s/he were placed in a cell, it could provide a useful reminder of the most important rights. However, before piloting *in situ*, it needed further development to maximise its effectiveness;
- the further information leaflet should not be given to suspects but the material it contained, particularly about the right to a copy of the Custody Record, should be readily available elsewhere.

Subsequently, the report of the RCCJ (para. 40, Runciman, 1993) recommended that, after the suggested developments had been made, the experimental *NDP* should be piloted in police stations. It was also recommended that the effectiveness of the experimental version for suspects be compared with that of revised version presented on a video-tape. In fact, neither of these recommendations was implemented, in part, perhaps, because the focus of concern shifted to the modification of the right to silence which was later introduced under the *Criminal Justice & Public Disorder Act 1994*.

With hindsight, this was fortunate. In the original study, the criterion for adequacy was liberal. Arguably, this was justifiable on the grounds that so few attempts had been made to rewrite and pilot the information given to suspects in police detention; the enterprise itself was rather novel and, as an independent reviewer commented,

> 'the study provides a useful step towards better methods of communication' (Brown, 1997, p. 81).

Now, however, despite the continuing absence of accepted criteria (Penny Letts, 1999, personal communication), it is more widely acknowledged that legally-significant information provided to 'customers' (hospital patients, tax payers, welfare benefits claimants, witnesses to alleged crimes) about their rights must be accessible (see, for example, the history of success of the Plain English Campaign). It seemed appropriate, therefore, for this thesis, to adopt a more stringent criterion. This involved detailed comparison, under experimental conditions, between the performances of the participants who were not intellectually disadvantaged and their counterparts with access to the original or revised versions. Unfortunately, the experimental *NDP* was found to be no more accessible to these participants, in the sense that it improved knowledge or understanding, than the (inadequate) versions it was intended to replace.

Though it is a limitation that performance among men and women with learning disabilities was not assessed directly, the positive relationship between intellectual ability and knowledge and understanding of the legal rights to detained persons (Cooke and Philip, 1998; Fulero and Everington, 1995; Grisso, 1981; Olley and Ogloff, 1993; see Ch. 3.1.2) indicates that the experimental version, which contains a caution which has been superceded, would also have been too complex for this group. Since the experimental *NDP* was evaluated, the current caution, which presents difficulties even for police officers (Study 3, Ch. 3.4), has been introduced. If this had been included, there seems little doubt that the material would have been too complex for people with learning disabilities.

The dearth of further published attempts in England and Wales, as in other jurisdictions, to develop more accessible versions of the *NDP* suggests pessimism about the task. This is not necessarily justified. First, though considerable care was taken in the development of the experimental version, the process was restricted by the time constraints imposed by the RCCJ. As the attempts of the Home Office to prepare new versions of the caution

attest (see Ch. 3), enhancing the accessibility of the information to detained persons is not straightforward. Secondly, based on the evidence which was then available (Bormuth, 1966; Gudjonsson, 1990a, 1991a; Ley, 1977; Sherr, 1986), too much weight was given to the apparently satisfactory results of the readability formula analysis without sufficient attention to its limitations. If another attempt to rewrite the *NDP* were to be made, its development should reflect some of the insights from modern forensic linguistics. For example, further analyses should be carried out of the meaning in everyday use of key terminology (such as 'caution') and the associations with other words and concepts which may interfere with understanding in a forensic context. In such analyses, data bases, such as the COBUILD Bank of British English (Rock, 1999a), audio-tapes and transcripts of police interviews with suspects (Shuy, 1998), or direct interviews with suspects in police detention (Cotterill, 2000; Hartley, 2000), might all be used. Similarly, the impact of possible changes to the order of items within specific sections (such as the caution) or across sections, needs to be studied empirically. The experimental version retained the order of the original and revised versions of the *NDP* but this may not be the most effective. As Shuy (1997) has pointed out, in relation to the *Miranda* rights:

> 'the discourse sequence in a series of statements can influence the respondent in what might be considered coercive ways' (ibid., p. 177-178).

Finally, a more sophisticated approach is needed to the evaluation of the impact of any rewritten version. Both recall and paraphrasing rely too heavily on verbal ability. Moreover, they do not allow any distinction to be drawn between knowledge or understanding of the 'facts' about the caution and legal rights and recognition of their legal significance. In any case, experience with the experimental *NDP* suggests that paraphrased recall becomes increasing difficult to score as the material is simplified. Other psychological methodologies which may be helpful include the 'think aloud' method (van Someren et al., 1994; see Ch. 4.2.1) or some other form of structured or semi-structured interview (Hartley, 2000), and tasks requiring the identification of phrases and sentences as the 'same as', or 'different from' the meaning of the text (see Grisso, 1981; Olley and Ogloff, 1993; Cooke and Philip, 1998, for examples of methodologies of the information about the caution and legal rights, or their equivalent, from other jurisdictions; see also Ch. 3.1.1 for examples from other areas of legally-significant decision-making). Since, as this chapter has so clearly shown, all

methodologies have strengths and weaknesses, the use of multiple indicators is recommended.

Nevertheless, the arguments made by Jackson (1995), in particular, regarding the inherent differences between the 'discourses' of the law and of lay-people, suggest that, despite further efforts, it may simply not be possible to translate information devised primarily to perform a legal function - that of satisfying the requirements of the Codes of Practice - into a form which fulfils adequately its intended purpose of safeguarding suspects, particularly 'vulnerable' persons such as men and women with learning disabilities. What other practical strategies might be possible?

First, as noted earlier (see Ch. 3.5), the presentation of the current *Notice to Detained Persons* could be improved for all suspects by police officers presenting the oral part of the information one sentence at a time. In addition, particularly given the difficulties experienced by many detained persons (Gudjonsson et al., 1993; Gudjonsson, Rutter and Clare, 1995; Irving, 1980; Irving and McKenzie, 1989), the clarity of the presentation by police officers needs to be more adequate (Brown et al., 1992; McConville et al., 1991). Specific training for Custody Officers may be helpful. Further, as suggested in Ch. 3.5, rather than using self-report to identify difficulties in understanding the caution, police officers and solicitors could at least ask suspects to explain its meaning in their own words, with standardised questions.

Secondly, and more radically, much greater emphasis could be placed on assisting school pupils, including pupils with learning disabilities, to develop a better understanding of, and increased confidence in exercising, the caution and their legal rights during police detention. Even among the general population, increased experience of arrest and detention does not seem to improve understanding of the caution and legal rights, or their equivalent (Cooke and Philip, 1998; Grisso, 1981; Gudjonsson, 1992a; Olley and Ogloff, 1993; Stricker, 1985), probably because high levels of situational anxiety (Gudjonsson et al., 1993, Gudjonsson et al., 1995) restrict suspects' ability to learn complex new material. Whilst it is undoubtedly important to remind suspects in police detention of the caution and legal rights, it may be most effective for people to become familiar with the information in another setting. Several of the 'general population' participants in the study of the original *NDP* (Study 1, Ch. 3.2) who were

able to recall the pre-1995 caution reported that they watched a television programme which attempts to portray the police in a realistic way ('The Bill'). This suggests that television, or video-tapes, might be used to educate children, as they grow up, to become familiar with suspects' right to silence and the importance of legal advice (Baldwin, 1992; Gudjonsson and Petursson, 1991; Leng, 1993; McConville and Hodgson, 1993; Moston et al., 1993; Pearse and Gudjonsson, 1997; Pearse et al., 1998). The current Government's initiatives to include 'citizenship' as a formal part of the curriculum may provide an opportunity to develop, and evaluate, ways of addressing this task which are effective for children in both mainstream and 'special' education.

Finally, it may be possible to alleviate the 'psychological vulnerability' which limited knowledge and understanding of the caution and legal rights presents to suspects with learning disabilities by improving their (limited) identification as 'vulnerable' by police officers and other criminal justice personnel. Improved identification *should* lead to much greater use of the 'special provision' for the presence of an Appropriate Adult during detention and questioning introduced under *PACE*. Though training, particularly for Custody Officers, may be helpful, the heterogeneity of the population of men and women with learning disabilities and the overlap with the general population is likely to limit its effectiveness. In the next chapter, the possibility of an alternative practical strategy, that of encouraging self-identification by 'vulnerable' persons, including men and women with learning disabilities, who have been detained by the police, is explored.

CHAPTER 7

ENHANCING THE 'SPECIAL PROVISION' AS A SAFEGUARD FOR 'VULNERABLE' ADULT SUSPECTS

Whilst understanding of the 'psychological vulnerabilities' of people with learning disabilities has developed recently, the possibility that, as suspects, they might face more difficulties than their peers received statutory recognition with the introduction under *PACE* and its accompanying Codes of Practice of the 'special provision' (see Ch. 1.4.2). According to this provision, an independent person (the Appropriate Adult, AA), must be present when a 'vulnerable' adult suspect is interviewed by the police or involved in any formal procedure (such as receiving the caution and legal rights).

Unfortunately, despite the legal and practical importance of the 'special provision' (see Palmer and Hart, 1996, p. 10 ff., for a review of some of the miscarriages of justice involving innocent people with learning disabilities; and Ch. 1), there are major problems in both the way it is drafted (see Ch. 1.4.2) and, as will be discussed in more detail in this chapter, in its implementation. The main purpose of this chapter is to describe the development and piloting of a questionnaire intended to alleviate some of these problems by encouraging 'vulnerable' adult suspects to identify themselves in police detention.

Since the introduction of *PACE*, there have been three editions of Code C of the Codes of Practice. For clarity, in this chapter these are invariably referred to as the:

1. *Original*: the first edition (Home Office, 1985b) which was introduced in England and Wales on 1st January, 1986, and remained in use until 31st March, 1991;
2. *Revised*: the second edition (Home Office, 1991), which was introduced on 1st April, 1991, and remained in use until 31st March, 1995. It contained one substantive change to the 'special provision': the independent person could no longer be the legal adviser acting for the suspect (see Ch. 1.4.2).

3. *Current*: the third edition (Home Office, 1995a), was introduced on 1st April, 1995. It contains some minor amendments (see Ch. 1.4), including improvements to the conditions of detention for 'vulnerable' suspects and a requirement that both the suspect and the independent person will be asked to provide reasons (which should be recorded) if the suspect declines legal advice. More subtly, there is a reminder that the 'special provision' should be implemented if there is *any* doubt about whether the suspect has a learning disability or mental health problems. Unless otherwise specified, it is this third edition which is referred to throughout this chapter.

7.1 BACKGROUND

7.1.1 THE USE OF THE 'SPECIAL PROVISION' FOR VULNERABLE SUSPECTS

Arguably, the best estimate of the prevalence at police stations of adult suspects with learning disabilities and/or other 'psychological vulnerabilities' is provided by Gudjonsson and his colleagues (Gudjonsson et al., 1993). They suggested that, consistent with more recent findings relating to mental health problems among adults living in private households in the UK (Singleton et al., 2001), 15 - 20 per cent of men and women in police detention following alleged criminal offending are 'psychologically vulnerable' and should receive the protection of the 'special provision'.

In practice, however, despite clear guidance that the 'special provision' should be used if the Custody Officer 'has any suspicion, or is told in good faith' (Home Office, Code C, para. 1.4) that an adult suspect may be 'vulnerable', it is rarely implemented. Based on large-scale examinations of the Custody Records (CRs) of different police forces, the rate of attendance at police stations by Appropriate Adults appears to range between:

- two in every thousand CRs (< 0.2%, N=20,085, Bean and Nemitz, 1994);
- approximately one in every hundred CRs (the precise figures are uncertain, N=10,167, Brown et al., 1992); and
- two in every hundred CRs (1.7%, N=23,321, Medford et al., 2000).

Whilst the quantity and quality of information available in Custody Records (CRs) is often very poor (Bean and Nemitz, 1994; Medford et al., 2000), these data are supported by a study using a different methodology. Based on observations in seven police stations in the Metropolitan Police District (MPD), Robertson et al. (1996) found that fewer than one per cent (0.4%, N=2571) of suspects aged 19 years or more received support from an AA; even among those who were interviewed, the figure remained below two per cent (1.7%, N=732).

In contrast, though, Gudjonsson et al. (1993) found that four per cent (N=160, for this part of the study) of suspects were supported by AAs when they were later interviewed (Pearse et al., 1998). Given subsequent data from the same force (Medford et al., 2000; Robertson et al., 1996), the suggestion (Bean and Nemitz, 1994) that the findings reflect the location of the study is unconvincing. A more plausible explanation is that the Custody Officers' behaviour may have been affected by the knowledge that the investigation was being carried out to inform the review of the RCCJ.

Nevertheless, even the most generous figures indicate a striking discrepancy between the estimated prevalence of 'psychological vulnerabilities' among adult suspects and Appropriate Adults' attendance at police stations; several studies have explored this discrepancy.

7.1.2 IDENTIFYING 'PSYCHOLOGICAL VULNERABILITIES'

Surprisingly, perhaps, given its legal importance and the attention given to miscarriages of justice involving innocent suspects, the empirical evidence suggests that the possibility of 'psychological vulnerability' among suspects is rarely documented.

Focussing exclusively on 'mental handicap' and 'mental disorder', Brown et al. (1992) found that only one per cent of Custody Records (N=10,167) contained any reference to the presence of these difficulties. In fact, the data may provide an overestimate of the level of identification of criminal suspects because more than half the CRs related to men and women who were not detained because of any alleged offending. Rather, they had been identified as people with a 'mental disorder' 'in immediate need of care or control' under s. 136 of the *Mental Health Act* 1983. Similarly low levels of

identification were reported by Bean and Nemitz (1994). Only two per cent (N=20,805) of the Custody Records they examined referred either to a specific form of 'psychological vulnerability' (for example, stating that the person was 'mentally disordered' or 'mentally ill') or to symptoms indicating an abnormal mental state (such as 'depressed' or having 'self-inflicted injuries').

In contrast, in a large study of Custody Records (N=23,321) in the Metropolitan Police District, Medford and her colleagues (Medford et al., 2000) found that just over four per cent (4.3%) contained a reference to some type of 'vulnerability'. However, the results do not necessarily indicate greater awareness among police officers in London; they may simply reflect the higher prevalence of 'vulnerable' suspects in that area. In any case, even the most generous figures suggest limited awareness of 'vulnerability'.

How is it that, then, on at least some occasions, Custody Officers become alerted to the possibility that a suspect has learning disabilities and/or other 'psychological vulnerabilities'? Information may be available to them through a variety of sources (Medford et al., 2000; Palmer and Hart, 1996), including:

- people who know, or are acquainted with, the suspect (including paid and unpaid carers; friends; other police officers; legal advisers; practitioners in primary or mental health care or social services);
- details of the circumstances of the arrest; and
- notification through the Police National Computer and other criminal justice records.

None of these sources is reliable, however, and identification often depends on Custody Officers' direct observations. From the findings of their substantial qualitative study, Palmer and Hart (1996) propose that the possibility that an adult suspect is 'vulnerable' is raised in response to:

- florid behaviour, such as 'shouting or screaming' (Palmer and Hart, 1996, p. 30);
- tangible clues, such as the possession of prescribed medication for epilepsy or a mental health problem, or obvious difficulties in signing forms;
- less obvious indications, such as a neglected or dishevelled appearance, nervous movements, or as one Custody Officer reported, the 'person's demeanour and behaviour' (Palmer and Hart, 1996, p. 31).

This framework, which relies on immediate visual and behavioural clues, does not seem adequate. First, there are practical difficulties in its implementation: the 'booking in' of suspects is often chaotic and there may be little opportunity for Custody Officers to carry out the detailed observations needed to assess 'psychological vulnerabilities' among suspects who are socially withdrawn or, superficially, appear 'ordinary' (Palmer and Hart, 1996). Secondly, since it is subjective, the application of the framework will rely, to an extent which is inappropriate given the legal and ethical importance of the 'special provision' for 'vulnerable' suspects, on the experiences and perceptions of particular officers:

> 'I'm not trained so I can only go on intuition, personal feeling, how I feel about that particular thing' (Palmer and Hart, 1996, p. 33);
>
> 'It's like a sixth sense isn't it? You just sort of get something and you think, well, he's not quite right this chap' (Palmer and Hart, 1996, p. 33).

Local working practices may also be important: where the police serve as Custody Officers on a rotational, rather than permanent, basis and therefore do not gain detailed knowledge of suspects in police detention, the possibility of 'psychological vulnerability' is less likely to be acknowledged (Gudjonsson et al., 1993; Palmer and Hart, ibid.).

The difficulties which the police have, however, may be exacerbated by the reluctance of at least some people who would be 'vulnerable' as suspects to identify themselves spontaneously. As part of another study (Study 1, Ch. 3.2), Clare and Gudjonsson (1991) asked men and women with learning disabilities (N=20; mean pro-rated Full Scale IQ: 65; s.d.: 5.3) a simple question: 'if you were arrested by the police, would you tell them you are a person with a learning disability?' Each person was then asked to explain the reason for his or her answer.

The responses suggested that spontaneous self-identification would be limited. Only thirteen (65%) of the participants indicated that they would inform the police of their difficulties. The ten men and women who explained their responses all realised that self-identification might be helpful to them (saying, for example 'the police would be kinder to you'; '(the police) could get in contact with (name of centre) to get someone to help'). None, however, made any specific mention of the 'special provision' under Code C of the Codes of Practice.

Worryingly, though, the remaining seven (35%) participants reported emphatically that they would not tell the police about their learning disabilities, primarily because the information was 'personal' or 'private'. Regardless of their level of intellectual functioning, most of these men and women appeared to have good social functioning; they seemed to be trying hard to appear 'ordinary'. In general, they were also the participants who were most reluctant to admit to reading difficulties. For example, several of them appeared willing to try to read the *Notice to Detained Persons* despite obtaining scores on the Neale Analysis of Reading Ability (Neale, 1978) which indicated that they were not functionally literate (Dalglish, 1982; see Study 1, Ch. 3.2.3). Indeed, one person who attempted to read the *NDP* obtained a reading accuracy score of zero (from a maximum score of 100). Arguably, these participants might be at particular risk of being detained and interviewed without their 'vulnerability' being identified and access to the 'special provision' ensured.

Though these findings are based on a very small sample, and no attempt has ever been made to replicate them, they are consistent with other results suggesting that people with learning disabilities, in particular (but see also a report of similar reticence among people with reading difficulties, Charnley and Jones, 1979), attempt to 'pass' (Edgerton, 1967) as members of the general population. Some Custody Officers attempt to circumvent these problems by applying their own 'screening' questionnaires which ask the detained person about his or her educational history and current problems (Palmer and Hart, 1996). Unfortunately, though, perhaps because the formal demands on Custody Officers are so great, it appears that such questionnaires are implemented to confirm existing concerns; they do not seem to be used systematically to assist in the identification of vulnerability among suspects who, at least superficially, appear 'ordinary'.

Even when the Custody Record of an adult suspect indicates that his or her 'vulnerability' has been identified, however, it is far from inevitable that he or she will receive the 'special provision'.

7.1.3 REQUESTING THE 'SPECIAL PROVISION'

There is consistent evidence that the number of adult suspects who are identified as vulnerable considerably exceeds the number of requests for an Appropriate Adult.

The CRs examined by Brown et al. (1992) suggest that AAs were sought for about two-thirds (65%, but the sample size is uncertain) of the putatively 'mentally disordered' or 'mentally handicapped' suspects. In striking contrast, in Bean and Nemitz' (1994) study, requests were made for fewer than one in ten (8%, N=486) of those who appeared 'vulnerable'. More recently, in their investigation in the Metropolitan Police District, Medford et al. (2000) noted that AAs were sought for just over half (54%, N=1008) of the suspects with documented 'vulnerability'. More encouragingly, based on direct observations in police forces in different parts of the country, Phillips and Brown (1998) found that AAs were requested for three-quarters (75%, N=44) of such suspects.

Whilst the factors contributing to the discrepancies between the findings remain uncertain, the evidence consistently suggests two main reasons why the 'special provision' is not always requested for 'vulnerable' suspects. First, there appears to be widespread confusion about the meaning and interpretation of Code C of the Codes of Practice. Some police officers simply do not seem to know that the 'special provision' may, in some circumstances, be relevant to adult suspects. Based on their interviews with Custody Officers, Bean and Nemitz (1994), for example, concluded that:

> 'the impression that AAs are for juveniles is deeply ingrained…there was little or no understanding that AAs were for adults' (Bean and Nemitz, 1994, p. 44).

Such a conclusion is consistent with Medford et al.'s (2000) finding that, in contrast with vulnerable adults, requests for the attendance of an AA were made for almost all (94.7%, N=3514) juvenile suspects. Given that it is now more than fifteen years since the introduction of *PACE* and its accompanying guidelines, these data indicate a worrying lack of knowledge of their responsibilities among those charged with the protection of detained persons (see *PACE*, Parts IV and V).

There seem also to be more complex misunderstandings. Some Custody Officers appear to believe that the guidance in Code C is discretionary: though identifying a suspect's 'vulnerability' they may subsequently decide that it is not 'serious enough' (Brown et

al., 1992, p. 78) to warrant implementation of the 'special provision'. In making such decisions, they appear to be influenced by the seriousness of the alleged offence (Robertson et al., 1996), and, in particular, by whether it is likely that the suspect will be interviewed (Medford et al., 2000; Palmer and Hart, 1996; Robertson et al., 1996). Where the investigation has already indicated that the offence(s) are very serious, a generous approach to the 'special provision' seems to be adopted (for example, in the case of Fred West, the alleged serial murderer, Campbell, 1995). Presumably, the intention is to minimise the possibility that any information might subsequently be ruled inadmissible in court. In contrast, where the alleged offence is apparently trivial, and perhaps seems unlikely even to lead to a charge, Custody Officers appear reluctant to detain 'vulnerable' persons whilst they seek to implement the provision. Recent findings (Medford et al., 2000) indicate that, on average, 'vulnerable' suspects wait more than four and a half hours between their arrival in custody and the attendance of an AA; 'many' (Medford et al., p. 10), however, wait for more than twenty hours. In this context, the use of discretion by Custody Officers appears pragmatic and compassionate. Nevertheless, it is a breach of the Codes, and has potentially serious implications under *PACE* (see Ch. 1.5).

Secondly, there seems to be widespread confusion about the procedure for implementing the 'special provision' (Bean and Nemitz, 1994; Medford et al., 2000; Palmer and Hart, 1996). Under Code C (see Ch. 1.4.2), if a Custody Officer has any suspicion that a suspect is 'mentally handicapped', the attendance of an AA must be sought. If, however, the suspicion is of 'mental disorder', the Custody Officer must request an AA and, at the same time, seek a medical assessment from a police surgeon (in London, Forensic Medical Examiner) to establish the suspect's 'fitness to detain' and 'fitness for interview'. In practice, though, Custody Officers often delay calling the Appropriate Adult until the police surgeon has visited and given his or her opinion (Medford et al., 2000; Phillips and Brown, 1998; Palmer and Hart, 1996; though c.f. Robertson et al., 1996). Medford et al. (2000), for example, found that, where the FME declared the suspect fit to be detained and interviewed, and did not make a specific recommendation for the involvement of an AA, invariably no one was called. Such an abrogation of responsibility is particularly unfortunate since police surgeons are generally general practitioners; they are used to focussing on physical disorders and, from a recent study (Gudjonsson et al., 2000), seem to have limited understanding of the

safeguards for 'vulnerable' suspects. Technically, Custody Officers have also committed a breach of the Codes of Practice.

Even when the police do attempt to contact an Appropriate Adult, however, they are not always successful (Medford et al., 2000; Phillips and Brown, 1998). Moreover, the problems do not end with the AA's attendance.

7.1.4 THE 'SPECIAL PROVISION' AT THE POLICE STATION

Perhaps reflecting the limitations of the official guidance about the 'special provision' (Code C, para. 11. 16; Pearse and Gudjonsson, 1996; see Ch. 1.4.2), different views have developed about the role of the Appropriate Adult at the police station.

Consistent with the findings that the 'special provision' is more likely to be implemented when it is known that the suspect will be interviewed ((Medford et al., 2000; Palmer and Hart, 1996; Robertson et al., 1996), it seems that the police perceive the Appropriate Adult's role as quasi-parental, safeguarding the physical welfare of the suspect to maximise the possibility that confession evidence is admissible in court (Bean and Nemitz, 1994; Palmer and Hart, 1996; Robertson et al., 1996). Contrary to Code C (para. 11.16), it appears that advice about their role is rarely given to Appropriate Adults (Palmer and Hart, 1996; Pearse, 1997). When advice is given, it may reflect the police officer's individual perspective rather than the official guidance. As one of the Custody Officers interviewed by Palmer and Hart (1996) reported:

> 'I would ask them to make sure they know what their role was…There's nothing worse if you have an interview with somebody and this novice keeps piping up and butting in all the time' (Palmer and Hart, 1996, p. 65);

or, more baldly, as was apparently explained to a Social Worker acting as an AA:

> 'You are wallpaper, pal' (Pinnock, 1989, quoted in Dixon et al., 1990, p. 120).

In striking contrast, a lawyer has suggested that the AA's task involves:

> 'advising the suspect about a number of crucial decisions...such as when to remain silent and refuse to answer police questions' (Rhead, 1997, p. 26).

The view that an unqualified, and unaccountable, Appropriate Adult should attempt to provide legal advice is controversial, even among lawyers (Palmer and Hart, 1996), not

least because legal privilege does not extend to the AA. It certainly conflicts with other guidance (Littlechild, 1996; Mencap, 1997) which emphasises that the AA's task is to *seek* legal advice for the suspect, if necessary over-riding his or her wishes, as is permitted under the Code C (Home Office, 1995a, para. 3.13). Before dismissing Rhead's view, however, it should be noted that it is consistent with a judgment made by the Court of Appeal (*Lewis (Martin), 1996*). Mr. Lewis sought to introduce evidence of a learning disability to argue that he should have had the support of an Appropriate Adult when he was interviewed. The court attached great weight to the fact that a legal adviser was present, stating that the functions of a solicitor and an AA are similar (Hodgson, 1997).

This continuing debate about the role of the Appropriate Adult suggests that, more than twenty-five years after the publication of the report of the *Confait* inquiry, Fisher's (1977) criticism of a lack of knowledge among police officers and lawyers of the safeguards for 'vulnerable' suspects (Fisher, 1977; see Ch. 1.2.2), is still depressingly relevant.

Not surprisingly, perhaps, given the uncertainty about the purpose of their attendance at police stations, there is a range of views about the effectiveness of Appropriate Adults in safeguarding 'vulnerable' suspects. Considerable concern has been expressed about their passivity (Hodgson, 1997; Palmer and Hart, 1996; Pearse, 1997). Of equal concern, however, are the contributions of 'active' AAs. Examining the audio-taped interviews of twenty suspects allegedly involved in serious offences which they initially denied but then admitted, Pearse (1997) found that four suspects were 'supported' by AAs (a total of six AAs). In two cases, the suspects' confessions were preceded by a prompt or intervention from the AA; in only one case did the AA intervene appropriately.

According to one of the Notes for Guidance in Code C (Home Office, 1995a, Note 1E), the person who acts as the Appropriate Adult for 'vulnerable' adult suspects should, ideally, be someone with relevant experience or training. In fact, family members are often requested by the police, in part because, in areas without any formal volunteer scheme, they may be more readily available than, for example, social workers (Bean and Nemitz, 1994; Medford et al., 2000; Palmer and Hart, 1996). However, there are concerns that they are too easily intimidated by the police because of their emotional

involvement (Hodgson, 1997). As one of the solicitors interviewed by Palmer and Hart (1996) commented:

> '(t)heir view could be coloured by personal knowledge of recent events...Insufficiently detached, strong likelihood of bias being present' (ibid., p. 69).

There may be additional difficulties. Sometimes, family members may also have mental health problems and/or be intellectually and socially disadvantaged. These problems may impair both their understanding of the procedures and their significance and their ability to assert themselves to safeguard their relative (Gudjonsson, 1993; Gudjonsson and MacKeith, 1994).

Unfortunately, however, there is empirical evidence (Bean and Nemitz, 1994; Pearse, 1997) that even people with professional experience of working with men and women with learning disabilities and/or other 'psychological vulnerabilities' may still not provide adequate safeguards for suspects. They may feel intimidated in a police station. These feelings can be complicated by role conflicts, for example, when the carer of a suspect with learning disabilities also knows the alleged victim, or when an Approved Social Worker is also involved in making an assessment under the *Mental Health Act 1983* (Bean and Nemitz, 1994; Hodgson, 1997). In addition, most health care and social services practitioners have a professional duty to disclose information 'in the public interest', so the extent to which they can maintain confidentiality is very limited. As the RCCJ (Runciman, 1993) commented, this:

> 'arguably undermines the whole purpose of the role' (Runciman, 1993, p. 44).

So far, the courts have made little positive contribution to resolving these problems. They have been concerned only with whether Appropriate Adult *could* have fulfilled the role (Palmer and Hart, 1996). They have often excluded confession evidence when it has been shown that the AA is themselves 'psychologically vulnerable' or is so estranged from the suspect that he or she could not act properly (Gudjonsson, 1993). However, they have shown little interest in whether the person *did* fulfil the role effectively (Palmer and Hart, 1996). Instead, the presence of an Appropriate Adult is usually no more than a formality (Harkin, 1997; Hodgson, 1997; Palmer, 1996) so that:

> 'the vulnerable suspect is apparently protected, but in reality no more so, and possibly less, than if the safeguards had not been implemented' (Palmer and Hart, 1996, p. 23).

This catalogue of problems indicates that, despite its importance, the 'special provision' does not fulfil adequately its intended purpose of safeguarding 'vulnerable' adult suspects. Indeed, Irving and McKenzie (1989), reviewing the *Confait* case in the light of the current legislation and guidelines, argue that the possibility cannot be excluded that Colin Lattimore would again be the victim of a miscarriage of justice. The comprehensive review recommended by the RCCJ (Runciman, 1993, para. 86) is, at last, being carried out (Ian Blackie, 2002, personal communication); as yet, though, no changes have been introduced.

Nevertheless, despite its problems, the 'special provision' is the *only* specific safeguard for adult suspects with learning disabilities and/or other 'psychological vulnerabilities' in police detention, and its 'importance…cannot be over emphasised' (Bean and Nemitz, 1994, p.7). It seems appropriate, then, to make some efforts, however limited, to alleviate the current problems. In this chapter, two related exploratory studies are described. In the first study, an experimental questionnaire is developed which is intended to support Custody Officers by encouraging people with learning disabilities and/or other 'vulnerabilities' to identify themselves. In the second study, the questionnaire is piloted at a police station to examine its effectiveness in everyday practice. As far as is known, more recent attempts to encourage self-identification by 'vulnerable' adult suspects have been based on the work carried out as part of these studies; they are therefore described in detail.

7.2 STUDY 13: DEVELOPING AN EXPERIMENTAL QUESTIONNAIRE TO ENCOURAGE SELF-IDENTIFICATION BY 'VULNERABLE' ADULTS

7.2.1 INTRODUCTION

The development of an experimental questionnaire to encourage self-identification by people who would be 'vulnerable' as suspects (initially reported as Clare and Gudjonsson, 1992) formed part of the research commissioned by the Royal Commission on Criminal Justice (RCCJ, Runciman, 1993) to inform their review of the protections

offered to men and women in police detention (see Ch. 7). In this study, however, the RCCJ was specifically interested in 'vulnerable' suspects, including men and women with learning disabilities.

Though this was the first formal attempt to encourage self-identification by men and women with learning disabilities and/or other 'psychological vulnerabilities', some guidance was available to inform its development. First, the wording of Code C (para.1.4), which is supported by case law (for example, *R v Everett* (1988); *R v Moss* (1990); *R v Cox* (1991); *R v Silcott, Braithwaite and Raghip* (1991)) suggests that the criteria for using the 'special provision' should be interpreted generously. The implication was that the measure should be inclusive rather than exclusive: its sensitivity was more critical than its specificity (Streiner and Norman, 1995). Secondly, though they were not aware of the 'special provision', the majority of people with learning disabilities in Clare and Gudjonsson's (1991) study understood that it might be helpful to inform the police of their difficulties. The wording of any measure needed to emphasise the potential benefits during detention of self-identification. At the same time, it is known that people with learning disabilities (Clare and Gudjonsson, 1991) or reading difficulties (Charnley and Jones, 1979) are sensitive about information relating to their vulnerabilities. Similar feelings may be widespread among men and women with mental health problems, given the stigma and social exclusion which they often experience (see Byrne, 1999, for a review). This suggested that it was important to try to minimise the likelihood that the measure would be perceived as demeaning by the people it was trying to benefit. Finally, given the constraints under which Custody Officers work (Runciman, 1993), it had to be easily administered.

The aim of this study was to develop an experimental measure which might encourage self-identification by men and women who would be 'vulnerable' in police detention. As part of the process of its development, a preliminary evaluation of its effectiveness was carried out. Since, as noted earlier in relation to the *NDP* (see Ch. 6.5), there are no agreed criteria for the acceptability of legal material (Penny Letts, 1999, personal communication), the study was descriptive.

7.2.2 METHOD

Developing the self-identification questionnaire

The development of the measure, like that of the experimental version of the *Notice to Detained Persons* (Study 9, Ch. 6.2), involved an 'iterative process' (Waller, 1984). First, after informal discussions with police officers with experience of working in the Custody Suite, an initial draft was prepared. This comprised a series of standardised statements, worded to emphasise Custody Officers' responsibility to provide particular assistance, or 'special help', to suspects who, in the terminology of Code C of the Codes of Practice, are 'mentally handicapped' or 'mentally disordered'. Since reading difficulties are also of practical importance, and are frequent amongst suspects (Gudjonsson et al., 1993), there was an additional statement about this problem. Each set of statements was followed by a closed question, only answerable with a 'yes' or 'no'. The decision to present the measure as a questionnaire was made for two reasons: first, it has been established that direct questioning is effective in encouraging people to provide information which is potentially sensitive (Hawton, 1985). Secondly, because of the susceptibility to acquiescence, particularly among people who, like the majority of suspects, are intellectually disadvantaged (see Ch. 5.3), it was thought that 'yes'/'no' questions would increase the likelihood of self-identification. The draft was submitted to the Home Office for advice about its legal acceptability. The use of the term 'special help' was agreed upon because it indicated that the presence of an AA was additional to, rather than a replacement for, the suspect's other legal rights.

Next, users of services for people with learning disabilities or mental health problems were asked for their response to the language used in Code C. Not surprisingly, the terms 'mentally disordered' and 'mentally handicapped' were not acceptable. Moreover, 'mental disorder' was not readily understood and was believed to refer only to the most severe forms of mental health problems. A number of other terms were suggested. Comments from police officers indicated that, whilst some of these were meaningful to them, others, such as 'mental distress', were not. As a compromise, the questionnaire was redrafted so that it referred to people with 'reading problems'; 'learning difficulties (mental handicap)'; and 'mental illness'; and asked whether the individual had attended a 'special school' in childhood or had a recent admission to a 'psychiatric hospital'.

With the agreement of the Home Office, the questionnaire was inserted at the end of the *oral information* section of the experimental version of the *NDP* so that, in real life, it would be read out by Custody Officers to *all* adult suspects, regardless of their appearance and behaviour.

A copy of the final version of the experimental self-identification questionnaire is shown as part of Study 14, in Figure 7.3.1.

Participants

Though the study involved experimental participants, not men and women in police detention, efforts were made to improve its ecological validity. A group (described fully in Ch. 6.3.2) of one hundred volunteers (64 men and 36 women) who, like the majority of suspects (Gudjonsson et al., 1993), were of below average intellectual ability, had already been recruited through 'job-finder' and work experience centres or basic skills clubs to take part in the evaluation of the experimental version of the *Notice to Detained Persons*. The participants in this study comprised the same group. All of them were 'adults' (i.e. aged ≥ 17 years) in terms of the criminal justice system and were fluent in English.

Measures

1. *Reading ability*: as described in Ch. 6.3.2, reading ability was assessed using the Schonell Graded Word Reading Test (GWRT, Schonell and Goodacre, 1974).

2. *Intellectual functioning*: as described in Ch. 6.3.2, intellectual functioning was assessed using all eleven sub-tests of the Wechsler Adult Intelligence Scale-Revised (WAIS-R, Wechsler, 1981).

3. *Evaluation of the questionnaire*: to assess whether the questionnaire's acceptability, qualitative information was collected about the participants' responses. To assess its effect on self-identification as a 'vulnerable' person, the responses of the participants were compared with independent information.

Procedure

The participants were recruited and assessed by Ms. Philippa Cross, the Research Assistant who had already been involved in Study 2 (Ch. 3.3) and subsequent studies (Studies 6, 7 and 8, see Ch. 5; and Studies 10 and 11, see Ch. 6). They were seen individually at the centres/clubs they attended.

Reading ability and intellectual functioning were assessed during the first session with the participants (described in full in Ch. 6.3). Three or four days later, after the evaluation of the caution and legal rights in the *NDP* (described in Ch. 6.4), the assessment of the self-identification questionnaire was carried out. Each participant was given a copy of the text, which was read aloud in its entirety. Then, every sentence was read out in turn. After each question, the participant was asked whether he or she would need this 'special help', and the responses were recorded.

7.2.3 RESULTS

Participant characteristics

Table 7.2.1 shows details of the chronological ages, Full Scale IQ scores and raw reading accuracy scores of the sample.

Table 7.2.1 Characteristics of the participants

	mean	s. d.	range
Chronological age	33.2	10.5	17 - 69
Full Scale IQ	79.5	15.8	53 - 128
Reading accuracy raw score	60.4	28.9	0 - 100
Number of participants	100		

Evaluation of the questionnaire

No one appeared distressed or irritated by the questions and they were answered fully by all 100 participants.

To examine the effect of the questionnaire on self-identification, each participant's responses were compared with his or her scores on the tests of:

- reading ability, using a reading accuracy score of < 43 (a reading age equivalent to 9 years) on the GWRT as the criterion for 'reading problems' (Dalglish, 1982); and
- intellectual functioning, using a Full Scale IQ score of ≤ 75 on the WAIS-R as the criterion for 'learning difficulties'.

As no other independent information was available, it was not possible to carry out similar comparisons for attendance at a 'special school' and/or having 'recently been in a psychiatric hospital' and/or having a 'mental illness'.

Table 7.2.2 shows the responses of the fifty-four (54%) participants who reported that they would need 'special help'.

Table 7.2.2 Participants' responses to the self-identification questionnaire

Reasons given by participants self-reporting need for 'special help'	RP/LD/SS 37	MI/PH 15	RP/LD/SS and MI/PH 2	Total 54
No. of participants fulfilling criteria for 'special help':				
• RP*	2	2	0	4
• LD**	15	2	0	17
• RP* and LD**	18	4	0	22
Total	35	8	0	43

KEY:
RP: 'reading problems'
LD: 'learning difficulties'
SS: attendance at 'special school'
MI: 'mental illness'
PH: 'recently in a psychiatric hospital'

* Reading accuracy score < 43 on the GWRT
** FSIQ ≤ 75 on the WAIS-R

Thirty-five (95%) of the participants who reported that they had 'reading problems' and/or 'learning difficulties' and/or had attended a 'special school' fulfilled the criteria for impairments of reading ability and/or intellectual functioning. These criteria were

also fulfilled by eight (53%) of the men and women who claimed that they needed 'special help' only on the grounds that they had 'recently been in a psychiatric hospital' and/or had a 'mental illness'. The validity of the remaining reports could not be established but, even assuming, very stringently, that *none* of them was true, no more than eleven (20%) participants could have been 'false positives'.

Of greater concern, though, in evaluating the questionnaire, was the proportion of 'vulnerable' men and women who identified themselves in response to the questions. Table 7.2.3 shows the responses of the 54 (54%) of participants who fulfilled the criteria for 'reading problems' and/or 'learning difficulties'.

Table 7.2.3 Self-identification among participants needing 'special help'

No. of participants fulfilling criteria for 'special help'	RP* 6	LD** 19	RP* and LD** 29	Total 54
Reasons given by participants self-reporting need for 'special help'				
• RP/LD/SS	2	15	18	35
• MI/PH	2	2	4	8
Total	4	17	22	43
Percentage of participants fulfilling criteria for RP and/or LD who reported need for 'special help'	67%	89%	76%	80%

KEY:
RP: 'reading problems'
LD: 'learning difficulties'
SS: attendance at 'special school'
MI: 'mental illness'
PH: 'recently in a psychiatric hospital'

* Reading accuracy score < 43 on the GWRT
** FSIQ ≤ 75 on the WAIS-R

Of these fifty-four participants, forty-three (80%) reported that they would need 'special help' in police detention: thirty-five (65%) stated that their reading ability and/or intellectual functioning was impaired and/or that they had attended a 'special school';

the remainder reported mental health problems (either having 'recently been in a psychiatric hospital' or a 'mental illness').

Though it seemed that, compared with their counterparts who fulfilled the criteria for 'learning difficulties', participants with 'reading problems' were more likely to report the need for 'special help', statistical analysis, using the Fisher exact test (see Appendix 7 for details) indicated that the difference was not significant.

7.2.4 DISCUSSION

Using an 'iterative process' (Waller, 1984), an experimental questionnaire to encourage self-identification by people who would be 'vulnerable' suspects in police detention was developed and a limited evaluation of its effectiveness was carried out.

The initial findings were encouraging: first, it appeared that the questionnaire was practical, and was not perceived as demeaning. Secondly, the need for 'special help' was reported by four-fifths (80%) of those who, from independent information about their reading ability and intellectual functioning, would be 'vulnerable' during police detention and interviewing. Thirdly, and of practical importance given the difficulties which are often experienced by Custody Officers in making contact with an Appropriate Adult (Medford et al., 2000), it did not appear that use of the questionnaire would result in an overwhelming number of requests for 'special help' by men and women for whom it was not needed.

Nevertheless, one in five (20%) participants who, based on their results on tests of reading ability and/or intellectual functioning, would require the 'special provision' during police detention and interviewing did not identify themselves as 'vulnerable'. This is not statistically significantly fewer than the 35% of participants who reported to Clare and Gudjonsson (1991) that they would not reveal their learning disabilities to the police spontaneously. Though the two studies used different participants so the findings could not be compared directly, the implication is that the effectiveness of direct questioning is limited. Still, a decision was made that, at this stage, it would be premature to discard the questionnaire. First, the generalisability of the findings from the preliminary evaluation was uncertain. In the real-life setting of a police station, a

greater proportion of 'vulnerable' suspects might identify themselves in order to access the 'special help', though, at the same time, there might be such a substantial increase in the number of attempts to gain the 'special provision' that the police would be overwhelmed. Secondly, the legal and practical importance of the 'special provision' suggested that determined efforts should be made to enhance its adequacy as a safeguard. Thirdly, consistent with the findings of more formal interviews (Harkin, 1997; Palmer and Hart, 1996, though c.f. Bean and Nemitz; Medford et al., 2000), informal discussions with Custody Officers suggested that they did not feel confident in identifying 'psychological vulnerabilities', particularly among suspects who, in the context of a police station appeared 'ordinary', and were eager for support.

These considerations suggested that the experimental questionnaire might be of potential value though it needed further development and, above all, piloting in an actual police station.

7.3 STUDY 14: PILOTING THE QUESTIONNAIRE TO ENCOURAGE SELF-IDENTIFICATION BY 'VULNERABLE' CRIMINAL SUSPECTS

7.3.1 INTRODUCTION

There is now substantial evidence that the identification of 'vulnerable' adult suspects can be difficult (Bean and Nemitz, 1994; Brown et al., 1992; Gudjonsson et al., 1993; Medford et al., 2000; Palmer and Hart, 1996). However, there were no published accounts, either in England and Wales or in other jurisdictions, of formal attempts to support the police in this task in their everyday practice. The findings of the previous study (Study 13, Ch. 7.2) suggested that the use of a questionnaire measure, presented to all suspects, might be helpful.

Some time later, it became possible to explore this suggestion by carrying out a pilot study in the real-life setting of a police station. The main aim was to investigate the feasibility and effectiveness of the questionnaire. It was expected that its introduction would increase the proportion of adult criminal suspects identified by Custody Officers as requiring the safeguard of the 'special provision' during police detention and

interviewing. It was also expected that, if more requests were made for AAs, they would attend the police station more frequently.

7.3.2 METHOD

Developing the questionnaire

Following the previous study (Study 13, Ch. 7.2), informal discussions were held with users of services for men and women with learning disabilities or mental health problems and Custody Officers in the Metropolitan Police Service and some changes were made to the experimental questionnaire:

- to reduce the demands on suspects' working memories, each set of statements was abbreviated, and the questions about the need for 'special help' were asked three times, rather than twice;
- in order that Custody Officers could implement the different procedures under Code C of the Codes of Practice for suspects who are 'mentally disordered' and those who are 'mentally handicapped', the statements about mental health problems and learning disabilities were clearly separated;
- to encourage 'vulnerable' persons to identify themselves, an additional statement was added, asking suspects if they would need 'special help' for 'any other reason'; if the answer was 'yes', they were to be asked why;
- the meaning of 'special help' was explained.

A copy of the amended version of the questionnaire is shown below, as Figure 7.3.1. It was made into a stamp, to be inserted onto the first inside page of every Custody Record (CR) opened for an adult suspect.

Figure 7.3.1 Final version of the questionnaire to encourage self-identification by 'vulnerable' adult suspects

THERE IS SOME SPECIAL HELP THE POLICE MUST GIVE TO PEOPLE WHO HAVE READING PROBLEMS OR WHO WENT TO SPECIAL SCHOOL. DO YOU NEED THIS SPECIAL HELP? YES ☐ NO ☐

THE POLICE MUST ALSO GIVE SPECIAL HELP TO PEOPLE WHO HAVE LEARNING DIFFICULTIES OR LEARNING DISABILITIES (MENTAL HANDICAP). DO YOU NEED THIS SPECIAL HELP? YES ☐ NO ☐

THE POLICE MUST ALSO GIVE SPECIAL HELP TO PEOPLE WHO HAVE A MENTAL HEALTH PROBLEM OR MENTAL ILLNESS. DO YOU NEED THIS SPECIAL HELP? YES ☐ NO ☐

DO YOU NEED THIS SPECIAL HELP FOR ANY OTHER REASON? YES ☐ NO ☐

IF YES, FOR WHAT REASON?:

.....

.....

THE TERM "SPECIAL HELP" IN THE QUESTIONS ON THIS PAGE REFERS TO THE PROVISION FOR AN "APPROPRIATE ADULT". PLEASE EXPLAIN THE ROLE OF THE "APPROPRIATE ADULT".

Materials

The study used the Custody Records of men and women aged 17 years or more who had been arrested and detained by the police for alleged criminal offences. Information about individuals who were detained for alleged immigration offences or had been taken to the station as a 'place of safety' under s. 136 of the *Mental Health Act 1983* was not included.

Measures

The information was collected by examining all the Custody Records of adults detained at the police station during a three-month period before, and then again after, the introduction of the questionnaire.

1. *Identification of 'vulnerability'*: since the purpose of the study was to evaluate the practical impact of the questionnaire, the identification of 'vulnerability' was operationalised as evidence in the CR that the Custody Officer had made at least one attempt to seek the 'special provision' of an Appropriate Adult for a particular adult suspect.

2. *Attendance of an Appropriate Adult*: the attendance of an AA was defined as evidence that an adult (aged 18 years or more) in one of the categories listed under para.1.7 (b) of Code C, and who was not excluded under Notes 1C and 1F of the Notes for Guidance in the same Code, had come to the police station to assist a 'vulnerable' suspect.
3. *Suspects' responses to the questions:* the responses were noted of suspects who responded affirmatively to one or more items of the questionnaire.

Procedure

The pilot study was carried out at a busy police station in the Southwark Division of the Metropolitan Police District. I planned the study but I received considerable support in making the necessary practical arrangements and in collecting the data from Inspector Roderick Jarman, a serving uniformed officer with many years' experience.

After permission had been obtained from the station's senior officer, 'baseline' information was obtained by examining all the CRs of adults detained for alleged criminal offences during the first three months of 1994. The introduction of the self-identification questionnaire was then discussed with, and agreed by, the permanent Custody Officers. After this, arrangements were made with the senior officer at the station for the administrative staff to stamp the questionnaire onto 1500 Custody Records (the average number used for adults in a three month period) and ensure these amended CRs were readily available in the Custody Suite; in case any were forgotten, a second stamp was readily available at the Custody Officers' desk so the questionnaire could be added immediately. In addition, the senior officer issued a directive so that the acting COs, who 'filled in' when their permanent colleagues were not available, understood that their participation was mandatory. The directive also reminded all Custody Officers that, in order to adhere to the guidance in Code C of the Codes of Practice, they should implement the 'special provision' if an adult suspect responded affirmatively to one or more of the questions or, if despite negative responses, they had a 'suspicion' or were 'told in good faith' that he or she was 'vulnerable'. Since it was expected that the piloting of the questionnaire would increase the demand for the 'special provision', they were also given explicit information about obtaining AAs through the local Social Services Department.

Initially, despite the directive, few of the CRs were stamped with the questionnaire; even where they had been stamped, it seemed that the questions were only asked by the permanent Custody Officers. Inspector Jarman liaised closely with the administrative staff and both of us visited the Custody Suite regularly so we were available to discuss the study with the officers working there. Though no more than 61% of the CRs were ever stamped in a month, the number of records containing the questionnaire increased considerably. There was also a very marked improvement in the completion of the questionnaire, and it appeared that the questions had sometimes been asked even when the CR had not been stamped. For the next three months, then, the CRs of all adult suspects detained for alleged criminal offences were examined; again, the relevant information was recorded.

Since the room where the CRs were kept was very close to the Custody Officers' desk, it was often possible to hear the questionnaire being read out as suspects were 'booked in'. Unintentionally, this provided informal information about its presentation.

7.3.3 RESULTS

Examining the Custody Records

The CRs were often inadequately, or inconsistently, completed and it was sometimes difficult to find the relevant information. Difficulties were resolved through discussion with Inspector Jarman.

Effect of introducing the self-identification questionnaire

Table 7.3.1 shows the percentage of alleged criminal suspects who were identified as 'vulnerable' by Custody Officers and for whom an AA was sought before and after the introduction of the self-identification questionnaire. The impact was examined statistically using the Chi-square test (see Appendix 7 for details).

Table 7.3.1 Effect on 'vulnerable' adult suspects of the introduction of the self-identification questionnaire

	Total number of relevant adult CRs	Number identified as 'vulnerable' by Cos	%	Number supported by AA	%
Before introduction	1611	41	2.5	32	2.0
After introduction	1433	63	4.4	58	4.0
		$\chi^2 = 7.88$*		$\chi^2 = 11.23$**	

* $p<0.005$; ** $p<0.001$ (1-tailed, df = 1)

As expected, following the introduction of the questionnaire, significantly more suspects were identified as 'vulnerable'.

Table 7.3.1 also shows the percentage of adult criminal suspects who were supported by an AA at the police station before and after the introduction of the self-identification questionnaire. Again, the impact was examined statistically using the Chi-square test. As expected, after the questionnaire was introduced, there was a significant increase in attendance by AAs.

However, Table 7.3.1 indicates that not all the suspects who were identified as 'vulnerable' in fact received the 'special provision'. Though information was only collected after the introduction of the questionnaire, it appeared that there were two reasons: in four (67%) of the six cases, the suspect's circumstances changed (for example, release from detention without further action; transfer to another police station or to Court) before the AA could arrive. In the remaining two cases, despite repeated attempts, an AA could not be contacted; in both cases, the police continued with their procedures. One suspect subsequently received a formal warning; the other, a formal caution.

Presentation of, and responses to, the questionnaire

It was not always possible for Custody Officers to present the questionnaire, usually because a suspect was too drunk. However, when the questions were asked, the style of presentation varied widely, from apparent concern to apparent contempt.

Table 7.3.2 shows the responses of the suspects who answered one of more questions in the affirmative.

Table 7.3.2 The responses of the suspects (N=63) who responded positively to the items of the self-identification questionnaire

Question	Number responding affirmatively	%
THERE IS SOME SPECIAL HELP THE POLICE MUST GIVE TO PEOPLE WHO HAVE READING PROBLEMS OR WHO WENT TO SPECIAL SCHOOL. DO YOU NEED THIS SPECIAL HELP?	37	58.7
THE POLICE MUST ALSO GIVE SPECIAL HELP TO PEOPLE WHO HAVE LEARNING DIFFICULTIES OR LEARNING DISABILITIES (MENTAL HANDICAP). DO YOU NEED THIS SPECIAL HELP?	21	33.3
THE POLICE MUST ALSO GIVE SPECIAL HELP TO PEOPLE WHO HAVE A MENTAL HEALTH PROBLEM OR MENTAL ILLNESS. DO YOU NEED THIS SPECIAL HELP?	15	23.8
DO YOU NEED THIS SPECIAL HELP FOR ANY OTHER REASON?	4	6.3

NB. Percentages add up to more than 100% because some suspects answered 'yes' to more than one question

The largest proportion of 'yes' responses followed the first question relating to reading problems or attendance at 'special school'. The question about 'other problems' was only answered affirmatively by four suspects:

- two who also responded 'yes' to the previous three questions but did not elaborate on any of their responses;
- one who reported a 'hormonal problem' after the birth of her child, but said that she had now recovered fully and did not need 'special help';

- one whose earlier response had indicated that he did not have mental health problems reported that he was receiving psychiatric treatment for schizophrenia.

7.3.4 DISCUSSION

The results of this small pilot study were encouraging. As expected, after the introduction of the self-identification questionnaire, significantly more adult criminal suspects were both identified as 'vulnerable' by Custody Officers and received the support of the attendance of an AA at the police station.

How can these findings be explained? First, it is possible that, as intended, the questionnaire supported Custody Officers in the identification of 'vulnerable' detained persons by encouraging explicit admissions about their problems from men and women whose difficulties would not otherwise have been recorded. The majority of positive responses to the questions were from men and women with academic difficulties (reading problems or a history of 'special' schooling). In the context of a police station, where the majority of suspects are intellectually disadvantaged (Gudjonsson et al., 1993), these are persons who, in the absence of any direct questions, it may be particularly hard to identify. As a police officer reported in an earlier study:

> '(a)s you come down (sic) the scale, people start becoming normal. And that's going to be a difficulty in assessment' (Palmer and Hart, 1996, p. 34).

A second possibility is that amending the Custody Records so that the questionnaire formed part of the 'booking in' procedure simply prompted Custody Officers to make use of information they would have documented but might otherwise have ignored. The design of the pilot study did not enable this possibility to be investigated but, in its support, an independent investigation in the same police force (Medford et al., 2000) found that reference to 'vulnerability' was recorded in just over four per cent (4.3%) of the CRs of adult suspects; this is similar to the proportion of suspects for whom the 'special provision' was sought after the introduction of the questionnaire. It has been suggested that the police do not always attempt to seek the 'special provision' for adult suspects identified as 'vulnerable' because of uncertainty about the appropriate procedures (Bean and Nemitz, 1994; Brown et al., 1992; Medford et al., 2000; Palmer and Hart, 1996; Phillips and Brown, 1998). Certainly, the evidence in this study of two

clear breaches of the Codes (when suspects for whom attempts to obtain AAs were unsuccessful were nevertheless involved in formal procedures) suggested that some Custody Officers are not fully aware of their responsibilities under *PACE*.

Though the implementation of the 'special provision' increased significantly after the introduction of the questionnaire, it was still very limited: AAs were sought, and obtained, for fewer than 5 per cent of adult suspects. This is a much higher rate than in other studies (Bean and Nemitz, 1994; Brown et al.; Medford et al., 2000; Robertson et al., 1996), but it is very far below the estimated proportion (15-20%) of suspects who may be 'vulnerable' during police detention and inteviewing (Gudjonsson et al., 1993). Many suspects seem to have been reluctant to admit their difficulties. Possibly, they objected to the wording of the questionnaire which was a compromise between the views of users of services for people with learning disabilities and mental health problems and the terminology used within the criminal justice system. However, neither the CRs nor informal evidence suggested that the items caused irritation or distress.

It seems more likely that some suspects did not respond because of the unsympathetic manner in which, Inspector Jarman and I could overhear, the questionnaire was sometimes presented. Since the study was carried out in a police force subsequently criticised for its 'institutional racism' (Macpherson, 1999, Ch. 6), it is possible that the way in which the questions were asked was related to the perceived ethnicity of the suspect; this was not investigated. Informally, though, it seemed that the presentation reflected the range of views towards suspects, regardless of their backgrounds, held by different Custody Officers. Though the study was strongly supported by the senior officer and the permanent Custody Officers, it did not appear acceptable to everyone. In the words of one officer:

> 'we give them (suspects) a solicitor and all these rights. And now you want us to give them this 'special help'! It's taking the piss'.

The extent to which these views were shared, or were modified during our discussions with officers in the Custody Suite, is unknown. However, the absence of complete compliance with the senior officer's directive suggests that unfavourable perceptions persisted. Unfortunately, detailed interviews, which would have allowed exploration of this suggestion, were not included in the pilot study.

7.4 GENERAL DISCUSSION

In an attempt to enhance the safeguard of the 'special provision', an experimental measure was developed to support Custody Officers in the identification of 'vulnerable' suspects, including suspects with learning disabilities, in police detention. The effect of this measure, which was presented as a questionnaire which would encourage self-identification by 'vulnerable' men and women was then evaluated, first with experimental participants, and then, in the real-life setting of a police station.

The findings were encouraging and have been received with considerable interest: requests for copies of the questionnaire have been received from police forces in different parts of England and Wales. In 1998, with only minor modifications, it was introduced formally into the Custody Records of the Metropolitan Police Service (as Form 57M: 'Appropriate Adult and Medical Care' (see Appendix 6)). Helpfully, the form also contains written guidance that, regardless of the suspect's answers to the questions, the assessment of vulnerability remains the responsibility of the Custody Officer. Whilst a large-scale evaluation is still awaited, it has been predicted that, since 1998, there has been:

> 'a significant increase in the number of vulnerable persons identified and requiring AAs since the form's introduction. Indeed, conversations with custody officers…would appear to lend weight to this hypothesis' (Medford et al., 2000, p. 21).

The adoption by the largest police force in England and Wales of this simple, and practical, strategy to enhance the safeguard provided to 'vulnerable' suspects in police detention is, of course, satisfying. However, it by no means resolves the catalogue of problems associated with the 'special provision'.

Difficulties in identifying suspects who are 'vulnerable' during police detention and interviewing remains. The initial, experimental, evaluation indicated that there is a substantial minority of persons with vulnerabilities who do not answer 'yes' to the questions. Independent information was only available about men and women with reading problems and/or impaired intellectual functioning so it is not known whether this reticence is shared by people with other difficulties; it may be, because of the stigma and social exclusion often experienced by those with mental health difficulties (Byrne,

1999). It seems very unlikely that the reluctance to admit their difficulties of the experimental participants in the first study (see Ch. 7.2) reflected the manner in which the questionnaire was presented; more plausibly, the wording or format of the measure may need to be developed further through discussions with users of services for people with learning disabilities, mental health problems, and other 'vulnerabilities', and the police. It would be disappointing if the version of the questionnaire introduced by the Metropolitan Police Service were simply copied by other police forces.

However, the findings of the pilot study also suggested that some 'vulnerable' suspects may be reluctant to admit their difficulties because of the way in which the questionnaire is presented by Custody Officers. As others have noted in relation to the presentation of the caution and legal rights (Brown et al., 1992; McConville et al., 1991), the implementation of police procedures is sometimes very poor. Some of the officers involved in the pilot study did not appear to understand the relevance to their work of the 'special provision': a confession to a criminal offence from an adult who is 'vulnerable' but does not receive this safeguard may be excluded as evidence in Court on the grounds that there has been a breach of the Codes of Practice (see *R v Everett 1988*; *R v Cox 1991*; *R v Silcott, Braithwaite and Raghip 1991*; and Ch. 1). In Southwark, where the pilot study was carried out, Form 57M has been introduced as part of a 'vulnerable adults' policy, jointly developed by the Metropolitan Police Service and the local Social Services Department to improve access to justice for alleged victims of crime as well as suspects (Southwark Council and the Metropolitan Police Service, 1996), and involving substantial training for police officers. Empirical research is needed to examine whether the presentation of the questionnaire is generally more adequate when it is placed within the context of a policy, rather than as a 'stand-alone' initiative.

Still, even if the questionnaire and its presentation were improved, the identification of *all* 'vulnerable' adult suspects is likely to remain unachievable: people with vulnerabilities, including people with learning disabilities, are a heterogeneous population who overlap with the general population. The best, perhaps, that can be achieved is to continue to review and refine practice and policy. There is still a long way to go. Even when men and women are identified as 'vulnerable', there is substantial evidence that Custody Officers do not always persist in attempting, or even make any

attempt at all, to implement the 'special provision' (Bean and Nemitz, 1994; Brown et al., 1992; Medford et al., 2000; Phillips and Brown, 1999; Robertson et al., 1996). Moreover, when AAs attend at the police station, they often provide little, or no, guidance (Dixon et al., 1990; Palmer and Hart, 1996; Pearse, 1997). Given their crucial role under s. 39 of *PACE* in protecting the suspect during his or her detention, Custody Officers' lack of awareness of their responsibilities is of great concern; it demands attention.

Nevertheless, the task of Custody Officers is not made easier by the complexity of the relevant procedures under Code C (see Ch. 1.4.2). At present, suspects who are identified as 'mentally disordered' should have access to a police surgeon (FME) as well as an AA; those who are 'mentally handicapped' only need access to an AA. On theoretical grounds, it is not clear why the two groups should be treated differently since the police surgeon's role is to address whether the suspect is 'fit to detain' or 'fit to be interviewed'; this is a different task from the assessment of 'vulnerability'. Moreover, from the very limited data available from the experimental study (Table 7.2.2) the distinction between the two groups does not seem to be empirically justified: more than half (53%, N = 15) of the participants who reported only that they had experienced difficulties with their mental health also fulfilled the criteria for 'reading problems' and/or 'learning difficulties'. Are these, then, primarily people with mental health problems or learning disabilities? The Codes of Practice should be amended so that the same procedures are used to safeguard all suspects identified as 'vulnerable', with the functions in this process of the Custody Officer, police surgeon (FME), and Appropriate Adult clearly set out.

Based on the findings of this chapter, and the anecdotal information reported by Medford et al. (2000), the introduction of questionnaires or other measures to encourage self-identification among 'vulnerable' men and women in police detention is likely to increase the demand for Appropriate Adults. Given the widespread and long-standing concerns about the role and its limits and the competence of Appropriate Adults (Harkin, 1997; Hodgson, 1997; Palmer and Hart, 1996; Pearse, 1997), the recommendation in the RCCJ's Report (Runciman, 1993) for a comprehensive review of the 'role, functions, qualifications, training and availability of appropriate adults' (ibid., para. 86) has assumed new importance. It is reassuring that, at last, a Home

Office Working Party has been convened to carry out this task (Ian Blackie, 2002, personal communication). In the meantime, there is a burgeoning network of schemes, mostly involving volunteers, which has developed to meet the demand for the 'special provision'. Though apparently regarded positively by Custody Officers (Medford et al., 2000), no published information is available about the location and organisation of different schemes, let alone formal evaluations of particular models or comparisons between them. Such work is urgently needed in order to promote 'best practice' and alleviate the position of the 'special provision' as 'something of the poor relation of criminal justice' (Hodgson, 1997, p. 785).

Finally, as suggested in the previous chapter (see Ch. 6.6) in relation to the caution and legal rights, much greater emphasis could be placed on assisting school pupils, including pupils with learning disabilities, to develop a better understanding of, and increased confidence in reminding Custody Officers of, the 'special provision'. Similar assistance should also be provided, as a priority, to men and women living in, or attending, designated services or training courses for people with learning disabilities, mental health problems, or other 'vulnerabilities'. Some materials which appear to be acceptable to people with learning disabilities are already available (for example, the picture book *You're Under Arrest* (Hollins, Clare, Murphy and Webb, 1996); an episode of the TV detective series, *Frost*, in which a man with Down Syndrome is detained for interviewing) but formal evaluation of their effectiveness is badly needed.

In the final chapter, the implications for the concept of 'psychological vulnerabilities' of the empirical work described in this thesis are considered, and the theoretical framework is reconsidered

CHAPTER 8

CONCLUSIONS: FROM 'PSYCHOLOGICAL VULNERABILITIES' TO 'CAPACITY'

Prompted by changes in social policy which are likely to lead to the increasing involvement in the criminal justice system of alleged offenders with learning disabilities, the work described in this thesis has explored the assumption in *PACE* and its accompanying Codes of Practice that, compared with their counterparts in the general population, people with mild learning disabilities are 'vulnerable' during police detention and interviewing because they are 'at risk' of providing information which is unreliable, misleading or self-incriminating, including false confessions. Since confessions play an important part in the English criminal justice system (Baldwin, 1993; Baldwin and McConville, 1980; Gudjonsson, 2003; McConville, 1993; McConville et al., 1991; Moston, 1990, cited in Pearse, 1997; Pearse, 1997; Pearse et al., 1998), the implication is that innocent people with learning disabilities have an increased likelihood of becoming involved in miscarriages of justice (see Ch. 1).

The findings of the experimental studies suggest that the assumption in *PACE* and the Codes about the 'vulnerability' of people with learning disabilities is well-founded. Compared with their peers in the general population, they are:

(i) less likely to understand information about the caution and legal rights;

(ii) more likely to make decisions which would not protect their rights as suspects and defendants; and

(iii) more likely to be acquiescent. They were also more likely to be suggestible because of their susceptibility to leading questions; and, though not more likely to confabulate, recalled proportionately more information which was incorrect. In addition, a review of the literature suggested that people with learning disabilities may also be at increased risk of compliance.

These findings are of serious concern. In order to alleviate their potential impact, attempts were made to improve the accessibility of the information about the caution

and legal rights provided to all suspects and to enhance the use of the specific safeguard for 'vulnerable' suspects.

The purpose of this chapter is two-fold: first, to review the implications for practice and policy of the findings of the empirical studies, and secondly, to revisit Gudjonsson's (1992a, 1993, 1994, 1999) concept of 'psychological vulnerabilities' which provided the theoretical framework for the studies.

8.1 IMPLICATIONS FOR PRACTICE AND POLICY

According to Zander (1995), the legislative framework provided by *PACE* and the Codes is unlikely to change. Accepting, then, that the present 'two-tier' system of safeguards for all suspects and additional protection for those who are identified as 'vulnerable' will remain, how might the difficulties which have been highlighted in the studies be addressed?

The pilot study (Study 14, Ch. 7.3) suggests that the problems which the police experience in identifying suspects with learning disabilities or other 'psychological vulnerabilities' (Bean and Nemitz, 1994; Brown et al., 1992; Gudjonsson et al., 1993; Medford et al., 2000; Palmer and Hart, 1996; Robertson et al., 1996) might be alleviated by encouraging self-identification. Whilst there is anecdotal support (Medford et al., 2000) for this suggestion, a large-scale evaluation of the effect of its introduction in the Metropolitan Police Service is needed to assess whether, after further development of its wording and format, the questionnaire should be introduced as part of the 'booking in' procedure for suspects throughout police forces in England and Wales.

However, difficulties in identifying 'vulnerable' suspects form only part of the catalogue of problems relating to the 'special provision'. Custody Officers need to be more aware of their statutory responsibilities under s. 39 of *PACE*. Implementation of the provision may, at times, be very frustrating, but, contrary to what some police officers seem to believe (Bean and Nemitz, 1994; Brown et al., 1992; Medford et al., 2000; Palmer and Hart, 1996; Phillips and Brown, 2000; Robertson et al., 1996a) and also emerged from Study 14 (Ch. 7.3), it is *not* discretionary. Training may be helpful but the adoption of the robust approach, mainly under s.78 of *PACE*, which the courts have taken to

excluding self-incriminating evidence involving other breaches of the Codes of Practice, including failures to provide Appropriate Adults for juvenile suspects (*R.v.Glaves 1993*; *R v Weekes (Trevor Dave) 1993*; see Ch. 1.5)), may encourage better adherence by police officers.

The problems which the police experience in implementing the 'special provision' might be alleviated if the guidance provided for them in Code C were less confusing (see Ch. 1.4.2). Though the recommendations of the working party convened by the Home Office (Home Office, 1995b) in response to the report of the RCCJ (Runciman, 1993) were not accepted, a comprehensive review of the whole of Code C is now being undertaken (Ian Blackie, 2002, personal communication). The material presented in this thesis indicates that this review should consider at least three major changes:

- since 'vulnerable' adult suspects are a heterogeneous group, and sometimes have multiple difficulties (Table 7.2.2), attempts to identify them by listing diagnostic categories (such as 'mentally handicapped', 'unable to read', Home Office, 1995a, paras.1.4 and 1.6; and see Ch. 1.4.2) are unlikely to be successful. The diagnostic categories should be replaced with a broad, generic, definition and the same procedures for all suspects identified as 'vulnerable'. As the Home Office working party recommended some years ago (Home Office, 1995b), these procedures should include involving an Appropriate Adult whenever a police surgeon (FME) is called to assess 'fitness to detain' and/or 'fitness to interview';
- further, despite the criticisms of the competence and effectiveness of legal advisers (Brown, 1997; Hodgson, 1994; Lord Chief Justice in *R.v.Paris, Abdullahi and Miller 1993*; McConville et al., 1991; McConville and Hodgson, 1993; Runciman, 1993), since there is overwhelming evidence that suspects who receive such help are less likely to make self-incriminating admissions, including confessions (Baldwin, 1992; Gudjonsson and Petursson, 1991; Leng, 1993; McConville and Hodgson, 1993; Moston et al., 1993; Pearse and Gudjonsson, 1997) and, it seems (Bucke et al., 2000), the importance of this right has assumed even more importance since the modification of the right to silence, it is very strongly suggested that suspects who are identified as 'vulnerable' should *always* be provided with legal advice as well as an Appropriate Adult;
- the roles of the Custody Officer, police surgeon (FME) and Appropriate Adult should be defined *clearly* in Code C. Standardised information, both oral and in

writing, which is available at police stations to advise AAs of their function and responsibilities, needs urgently to be prepared; and

- the material in Code C needs to be consistent with the primary legislation (*PACE*). Even more importantly, it needs to be both drafted, and presented (Bhatia, 1993; Hartley, 1978 et seq., 1994; and see Jackson, 1995), in a way which is accessible to both Custody Officers and to suspects. The experience of attempting to devise and pilot an experimental version of the revised caution and the *Notice to Detained Persons* (Studies 9, 10, 11, and 12, Ch. 6) suggests that this is unlikely to be straightforward. Certainly, it is unlikely to be satisfactory to rely on any single measure, such as a readability formula or paraphrased recall, for assessing the accessibility of any new material. Instead (see Ch. 6.6), the more sophisticated approaches which have been developed since the experimental work reported in this thesis was carried out are needed.

However, the possibility of redrafting Code C is constrained by the continuing uncertainty, almost two decades after the implementation of *PACE*, about the purpose of the Appropriate Adult at the police station (Bean and Nemitz, 1994; Littlechild, 1996; Medford et al., 2000; Mencap, 1997; Palmer and Hart, 1996; Pearse, 1997; Pearse and Gudjonsson, 1996 Rhead, 1997; Robertson et al., 1996; see Ch. 7.1.4). The Home Office working party which has recently been convened (Ian Blackie, 2002, personal communication) needs to consider this issue in detail, consulting with a broad group of all those involved, including people who have received support from an AA. In the meantime, though, the courts could contribute positively to the present confusion by clarifying the meaning of an 'effective' AA (Palmer and Hart, 1996), whilst the investment of resources in formal evaluations, and comparisons, of the many different AA schemes which have been set up would enable a sound basis for the provision of interim guidance about 'best practice' (see Ch. 7.4).

The problems with the 'special provision' would be of less concern if the safeguards provided for all suspects were more adequate. First, the remarks which were overheard during piloting of the questionnaire to improve self-identification by 'vulnerable' suspects (Study 14, Ch.7.3) suggests that the sloppy delivery of the caution and legal rights which others have noted (Brown et al., 1992; McConville et al., 1991) is still, unfortunately, a feature of at least some 'booking in' procedures, and demands attention

from senior police officers. Secondly, given the problems of the caution (Study 3, Ch. 3.4), its complexity should at least be minimised by presenting the three sentences in turn, with simple standardised questions after each. A similar approach should be adopted for the other information about the legal rights which is normally read out to suspects. To encourage police officers to implement these changes, the Custody Record should be amended so that the actual responses (and those of Appropriate Adults for 'vulnerable' suspects) could be monitored.

Police officers, though, cannot present information adequately which they themselves do not comprehend fully. Whilst admittedly based on a small sample, perhaps the most worrying of all the findings presented in this thesis relates to the limited extent of understanding of the current caution among serving police officers (Study 3, Ch. 3.4). The legal significance of the modification of the right to silence under the *Criminal Justice and Public Order Act 1994* means that it is not satisfactory for officers merely to receive an outline of the elements of the caution (National Crime Faculty, 1996); instead, they should receive a standardised explanation of its meaning. The description of an attempt to devise a more accessible version of the revised *NDP* (see Ch. 6) indicates the complexity of the task but, if the safeguards for suspects are to have any meaning, further efforts, perhaps drawing on the innovative methodologies developed recently, particularly in the field of forensic linguistics (Cotterill, 2000; Rock, 1999a, b; Shuy, 1997, 1998; see Ch. 6.6), must be made.

The findings of the studies reported in this thesis also have implications for the detention and interviewing of both suspects with learning disabilities and their counterparts in the general population. With the exception of Studies 10 and 11 (Chapter 6), which involved intellectually disadvantaged participants, the 'general population' groups who took part in the investigations were considerably more intellectually able than suspects at police stations (mean pro-rated Full Scale IQ: 83; s.d. 14, Gudjonsson et al., 1993). The implication is that, in real life, some of the 'overlaps' in the responses of the 'general population' and 'learning disabilities' groups (for example, in their perceptions of a suspect's need for legal advice after making a true and a false confession (Fig. 4.3.1), and some of the perceived consequences of confessing to (Fig. 4.3.2) and being convicted of (Fig. 4.3.3), an offence, and on the measures of acquiescence (Figure 5.3.1) and Total Suggestibility (Fig. 5.6.1)) are likely to be more

marked; indeed, the performance of the two groups may not be too dissimilar. In support of this suggestion, it is worth noting that many successful appeals against convictions based, in part, on confession evidence involve people whose intellectual functioning lies within the Borderline range (Gudjonsson, 2003). Though they are likely to be at greater risk of experiencing difficulties than their more intellectually able peers, their superficial 'ordinariness' means that their problems may be particularly hard for the police to identify (Palmer and Hart, 1996; and see Ch. 7.1.2). Whilst new training initiatives for the police have been introduced which emphasise 'investigative interviewing' (Central Planning and Training Unit, 1994a, b; National Crime Faculty, 1996, 1998; see Chapter 1.1), the effect of these, and other developments, such as 'cognitive interviewing' (see Ch. 5.11), in improving the quality of police interviews (Baldwin, 1993, 1994; Moston et al., 1992; Pearse, 1997; Pearse and Gudjonsson, 1996; Robertson et al., 1996) and minimising the relevance of the 'psychological vulnerabilities' of suspects remains uncertain, and needs further research.

Nevertheless, at least in 'run-of-the-mill' cases, such as those analysed by Pearse et al. (1998), the behaviour of the police during interviewing seems to have little impact on detained persons. Instead, they seem to adopt a position from the start and remain with it. Whilst suspects often appear to be active decision-makers (Hilgendorf and Irving, 1981; Irving and Hilgendorf, 1980), because, perhaps, because of high levels of anxiety (Gudjonsson et al., 1993; see Ch. 1.2), their ability to understand and use new information in their decision-making may be limited. Certainly, it does not appear that repeated experiences of arrest and detention necessarily improve understanding of the caution and legal rights (Cooke and Philip, 1998; Fulero and Everington, 1994; Grisso, 1981; Olley and Ogloff, 1993). Instead, consistent with the evidence of the potential importance of 'individual differences' (Baldwin and McConville, 1980; Gudjonsson, 1984 et seq., 1989a et seq.; Gudjonsson and Petursson, 1991; Moston et al., 1992; Pearse et al., 1998; Sigurdsson and Gudjonsson, 1996b; Softley et al., 1980), and the findings of Study 5 (Ch. 4.3), decision-making during police detention and interviewing may, in part, reflect factors relating to suspects' experiences prior to arrest. Though PACE and the Codes *must* provide adequate safeguards for suspects, an additional approach, which has already been mentioned (Chs. 3 and 6), and which underlies the attempt to enhance the 'special provision' (Study 14, Ch. 7.3), is to encourage 'vulnerable' people, as well as children and adults in the general population, to develop

during everyday life much greater awareness of the criminal justice system and its operation. This need not be particularly subtle. For example, the naivety about the significance and consequences of making a confession to a serious offence shown by the 'learning disabilities' participants in Study 5 (Ch. 4.3) would be of much less concern in the context of a high level of knowledge and understanding of the practical importance of legal advice for safeguarding suspects, including suspects who are innocent (Baldwin, 1992; Leng, 1993; McConville and Hodgson, 1993; Moston et al., 1992; Pearse and Gudjonsson, 1997; Pearse et al., 1998), and demonstrated ability to exercise this right, even in the face of discouragement (see McConville et al., 1991; Ch. 1.4.1). Though some materials have been developed (such as the books by Hollins and her colleagues: Hollins, Clare et al., 1996; Hollins, Murphy et al., 1996), and have received positive feedback, their effectiveness is unknown. The findings suggest that a task which needs to be undertaken is the preparation, implementation, and evaluation of a detailed, and accessible, 'curriculum' which integrates information about the criminal justice system for 'vulnerable' suspects and defendants, victims, and other witnesses. Such an initiative would be consistent with the principles of legal and civil rights, independence, choice, and inclusion which form the basis of the Government's recent strategy for people with learning disabilities (*Valuing People*, Department of Health, 2001).

Whilst the limitations of each study have been discussed as they were reported, there are three more general matters which need to be considered. First, the approach adopted in this thesis has been broad, rather than detailed. In addition to the examination of three domains of putative 'psychological vulnerability' for people with learning disabilities, as a practicing applied psychologist, I chose also to explore two practical initiatives to address the implications of these 'vulnerabilities' for police detention and interviewing of these 'vulnerabilities'. The corollary of this approach is that the data analysis has focussed on the differences between the groups. With hindsight, it would have been helpful to have involved larger numbers of the same, rather than mostly different, participants in every study so that the possibility that there are some individuals with learning disabilities (or, indeed, in the general population) who are at risk of all three areas of 'psychological vulnerability', could also have been explored. Secondly, though a 'proxy measure' of social functioning (attending day- and/or residential services for people with learning disabilities) formed part of the criteria for allocation to the

'learning disabilities' or 'general population' groups (see Methodological Considerations, Ch. 2.4.1), and its importance in decision-making was recognised (see Ch. 4.1.2; Ch. 4.4), the role of affective factors and other non-cognitive factors, which are so important in everyday social functioning, was not considered explicitly in the experimental studies. The possibility that these factors may contribute to the 'overlap' in performance between people with learning disabilities and their 'general population' peers still needs to be examined, perhaps in a multi-factorial study using a very large number of participants. Thirdly, no effort was made to examine the effects of gender or, perhaps more importantly, at least with regard to the measures of personality characteristics (Gudjonsson et al., 1995; see Ch. 5) and self-identification as a 'vulnerable' suspect (see Ch. 7), of ethnic background. Given that men and women from ethnic minority backgrounds may be over-represented among people with learning disabilities (Mir, Nocon, Ahmad and Jones, 2001), this is a omission which needs to be addressed in subsequent studies and, in particular, in the development of materials to enhance understanding of the criminal justice system.

Nevertheless, the work reported in this thesis presents the most detailed available exploration of the difficulties which people with mild learning disabilities may experience during police detention and interviewing, and has included an innovative methodology (Studies 4 and 5; see Ch. 4) which, with further development, might be used to examine the process of decision-making. Moreover, the findings have been of practical significance. However, the theoretical framework on which the studies are based needs to be revisited.

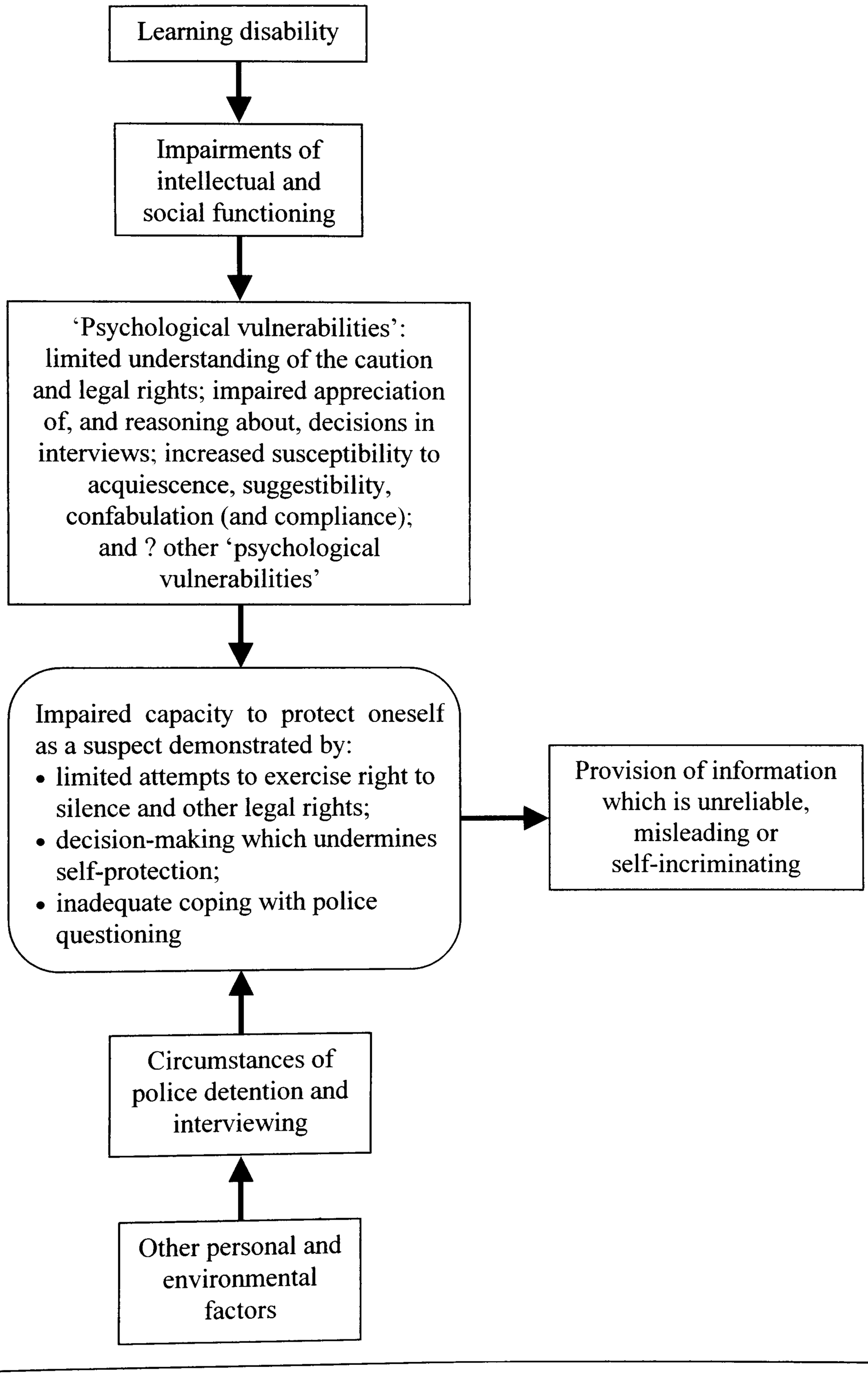
8.2 'PSYCHOLOGICAL VULNERABILITIES' REVISITED

Though deriving independently from the pioneering work of Grisso and his colleagues (Grisso, 1986; Grisso and Appelbaum, 1991, 1995, 1998; Hoge et al., 1997; see Ch. 2.1), it has been argued here (see Ch.2.1) that Gudjonsson's (1992a, 1993, 1994, 1999) concept of 'psychological vulnerabilities' is positioned within a 'functional' rather than a 'status' approach. As was shown in the discussion of the case of Engin Raghip (see Ch. 2.1.3), and has been emphasised repeatedly by Gudjonsson (1993, 1994, 1997; 2003), their relevance depends on the nature and circumstances of the particular case. Unfortunately, though, this point is often misunderstood (see, for example, Beail, 2002;

Cooke and Carlin, 1998) and it is assumed that 'psychological vulnerabilities' are always important for a particular individual or group during police detention and interviewing.

Drawing on Irving and Hilgendorf's (Irving and Hilgendorf, 1980; Hilgendorf and Irving, 1981) powerful argument, being interviewed by the police, and by extension, the period of detention which normally precedes interviewing, involve a suspect in a series of decision-making tasks (see Ch. 2). The extent to which an individual's understanding, knowledge, skills and abilities meet the demands involved in making decisions within this context depends not only on factors within the person, but also on the specific instance of this context (for example, detention following alleged shoplifting compared with alleged terrorist offences) and the support available. 'Psychological vulnerabilities' may be conceptualised as the individual factors which may impair suspects' *capacity* or ability to make decisions which protect their rights. Though the positioning of 'psychological vulnerabilities' within an interactional functional model has been emphasised recently by Gudjonsson (2003), nevertheless, his framework is not explicitly capacity-based. A capacity-based version of the framework presented in Fig. 2.2.1 might appear as Fig. 8.2.1.

Figure 8.2.1 A capacity-based framework suggesting the possible role of 'psychological vulnerabilities' in the provision of unreliable, misleading or self-incriminating information by suspects with learning disabilities during police detention and interviewing



What are the advantages of this framework? First, it is consistent with the empirical evidence (see Ch. 8.1 for a summary) which suggests that there are overlaps between the performance of people with learning disabilities and their peers in the general population and challenges the assumption of a 'cut-off' between people with and without a diagnosis of mental disability. Such an approach is supported by other findings, involving different decisions (for example, Grisso et al., 1995; Marson et al., 1994, Morris et al., 1993; Wong et al., 2000). These suggest that, though people with a diagnosis of 'mental disability' are at increased risk of experiencing more difficulties in decision-making, implying that the 'special provision' for 'vulnerable' suspects under *PACE* should be retained, such difficulties are by no means inevitable; nor is it the case that the capacity to make a decision is never impaired among their 'general population' peers. Instead, impaired capacity to make specific decision is always the product of the interaction between an individual's abilities and the particular circumstances of his or her detention and interviewing. The case of David MacKenzie (see Ch. 1.5 and Ch. 5.10) highlights this point: though Mr. MacKenzie produced an abnormally high number of confabulations in relation to crime-related material, in other circumstances his confabulations were unexceptional.

Secondly, a capacity-based functional approach is consistent with that taken by the courts towards the 'psychological vulnerabilities' of suspects and defendants. Since the landmark judgement relating to Engin Raghip (*R.v.Silcott, Braithwaite and Raghip 1991*; and see Ch.2.4.1), the courts have 'not been attracted' (judgment of the Court of Appeal, cited by Gudjonsson, 1992b, p. 249) to the notion that 'vulnerability' can be established by predetermined criteria, applied in a 'blanket' fashion, rather than the nature and circumstances of a particular case. At the same time, they ruled that, because of the different legal contexts, a jury should not be expected to judge from a defendant's demeanour during a criminal trial how he or she had responded as a suspect during police detention and interviewing (see Gudjonsson, 1992b, 2003, for more detailed discussion). Moreover, both case law and statutory legislation have adopted or considered a capacity-based approach to other areas of legally-significant decision-making, including:

- consent to treatment (*Re C (Adult) Refusal of Medical Treatment 1994)*;

- decision-making for people who are unable to decide for themselves (Mental Incapacity Bill (Law Commission, 1995; Lord Chancellor's Department, 1999); and,
- reform of the *Mental Health Act 1983* (Richardson, 1999), though the proposals have not, so far, been accepted by the Government.

Thirdly, from the perspective of developing further the investigations reported here, a capacity-based approach encourages more detailed exploration than that of 'psychological vulnerabilities' of the psychological processes which contribute to the differences between individuals in their knowledge, understanding, appreciation, reasoning, and communication of their decision-making. The heterogeneity of the responses among participants in the general population and, more interestingly, in the context of this thesis, their 'learning disabilities' peers, suggests that such research may be helpful both in devising strategies to minimise the likelihood that men and women with learning disabilities will be 'at risk' as suspects and, more broadly, in making suggestions to develop further access to justice for victims and other 'vulnerable' witnesses.

Recently, Gudjonsson (The Guardian, 17th December, 2002) has suggested that, in contrast with other jurisdictions, in England and Wales, the issue of miscarriages of justice involving unreliable, misleading or self-incriminating admissions made by innocent suspects during police detention and interviewing is now being addressed properly. It is sincerely to be hoped that new proposals to:

> 'achieve end to end reform... (to) rebalance the Criminal Justice System in favour of victims' (Press release announcing the Criminal Justice Bill, Home Office, 21st November, 2002)

do nothing to jeopardise this situation, particularly for 'vulnerable' people such as men and women with learning disabilities.

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APPENDICES

APPENDIX 1

PUBLISHED STUDIES DIRECTLY RELATED TO THE EMPIRICAL WORK REPORTED IN THIS THESIS

1. Clare, I.C.H. and Gudjonsson, G.H. (1991). Recall and understanding of the caution and rights in police detention among persons of average intellectual ability and persons with mild mental handicap, *Proceedings of the 1st Annual Conference of the Division of Criminological and Legal Psychology, 1*, Leicester: British Psychological Society, Issues in Criminology, No. 17, 34-42.

This first paper examined the impact of exposure to the information on recall and understanding of the *Original* version of the information in the *Notice to Detained Persons (NDP)* was examined among adults with learning disabilities and their counterparts in the 'general population'. Awareness among people with learning disabilities of the need to identify themselves to the police as 'vulnerable' if they were arrested as suspects was also assessed.

- compared with their 'general population' counterparts, the participants with learning disabilities had much poorer knowledge of the caution and legal rights initially and they benefited much less from exposure to the *NDP*;
- however, the impact of exposure to the *NDP* on the 'general population' participants was also limited, suggesting that, even for them, the material was too complex;
- though participants in both groups performed relatively well on a questionnaire designed to elicit understanding of the information in the *NDP*, the findings must be treated with caution because of methodological problems;
- only 65% of the participants with learning disabilities reported that, if they were arrested, they would inform the police of their difficulties. The police cannot rely on unprompted self-identification to help them recognise 'vulnerable' suspects with learning disabilities.

2. Clare, I.C.H. and Gudjonsson, G. H. (1992). *Devising and piloting an experimental version of the "Notice to Detained Persons".* Royal Commission on Criminal Justice, Research Study No. 7. London: H.M.S.O.

From previous studies, it appeared that both the *Original* and *Revised* versions of the *Notice to Detained Persons* were too complex, even for people in the general population. The Royal Commission on Criminal Justice funded an attempt to use psychological methodologies to a) rewrite the information about the caution and legal rights so that it would be more accessible; and b) encourage self-identification by people who would be 'vulnerable' suspects.

- it was possible to rewrite the *NDP* so that, on an objective measure, the material was much less complex. Indeed, it was more compared well with a popular 'tabloid' newspaper;
- piloting with experimental participants, whose mean intellectual functioning was similar to that of suspects suggested that the section of this rewritten, or *Experimental*, version which was intended to be presented orally by Custody Officers was of most help in improving knowledge and understanding of the caution and legal rights;

- at the same time, comprehension of the *Experimental* version was better than that of the *Original* version;
- the questionnaire for encouraging self-identification seemed acceptable to participants;
- about four-fifths (80%) of participants who, from independent information about their reading ability and intellectual functioning, would be 'vulnerable' as suspects identified themselves as needing assistance;
- it was recommended that the *Experimental* version of the *NDP* and the questionnaire were piloted in the real-life setting of a police station.

3. Clare, I.C.H. and Gudjonsson, G.H. (1993). Interrogative suggestibility, confabulation and acquiescence in people with mild learning disabilities (mental handicap): Implications for vulnerability during police interrogation. *British Journal of Clinical Psychology, 32*, 295-301.

   Examining a different area of possible 'psychological vulnerability, this paper presents preliminary data on the performance among adults with mild learning disabilities and their counterparts in the general population on established measures of three personality characteristics which have been found relevant to disputed or proven false confessions. Compared with their peers, the participants with learning disabilities were:
   - much more suggestible on the Gudjonsson Suggestibility Scale Form 2 (GSS 2, Gudjonsson, 1987), because of their susceptibility to 'leading questions'. In contrast, they were no more 'vulnerable' to interrogative pressure;
   - much more likely to confabulate during free recall of the story in the GSS 2; and
   - more likely to acquiesce, using the Acquiescence Scale of Winkler, Kanouse and Ware, 1982.

4. Clare, I.C.H. and Gudjonsson, G.H. (1995). The vulnerability of suspects with intellectual disabilities during police interviews: A review and experimental study of decision-making, *Mental Handicap Research (Journal of Applied Research in Intellectual Disabilities), 8* (2), 110-128.

   After reviewing the experimental evidence relating to understanding of the caution and legal rights, and susceptibility to certain personality characteristics, this paper reported a study to examine a third possible area of 'psychological vulnerability' for people with learning disabilities, that of decision-making. A fictional film was made of a police interrogation, depicting a male suspect making a true and a false confession. At scheduled pauses during, and just after, the film, items from a semi-structured interview schedule were presented. Compared with their counterparts in the 'general population', the participants with learning disabilities:
   - were less likely to think that a police interview and false confession might have serious consequences for the suspect. Their views reflected the importance they placed on the suspect's actual, rather than professed, guilt or innocence; and
   - more likely to believe that an innocent suspect might be protected because his or her innocence would be evident to others.

5. Clare, I.C.H., Gudjonsson, G.H. and Harari, P.M. (1998). Understanding of the current police caution (England & Wales). *Journal of Community & Applied Social Psychology*, *8*, 323-329.

The *Criminal Justice and Public Order Act 1994* (England and Wales) modified suspects' right to silence during police questioning and required a new police caution, the c*urrent* version. Understanding of this version was examined to assess its adequacy as a safeguard for suspects.

- even under optimal conditions, when the participants could focus on each sentence in turn, only 1 in 10 of participants from the general population, 6 in 10 of A-level students, and 9 in 10 police officers demonstrated their understanding by explaining all three sentences correctly;
- for all groups, the middle sentence, which contains the information about the modification to the right to silence and its implications was the most difficult; and
- each of the three groups of participants experienced more marked problems in understanding the caution when it was presented in its entirety, as would happen in real life.

APPENDIX 2

SUMMARY OF THE INVOLVEMENT IN THE STUDIES OF DIFFERENT GROUPS OF PARTICIPANTS

Study:	1	2	3	4	5	6	7
Groups used:	A, B	C, D	E, F, G	H	D, I, J	A, B, K, L	A, B, K, L

Study:	8	9	10	11	12	13	14
Groups used:	A, B, K, L	n/a	L, M	L, M	B, D, L, M	L, M	n/a

Key

A. People attending designated day-services for people with learning disabilities, London
B. People in the general population in paid employment, London
C. People attending designated day-services for people with learning disabilities, London
D. People in the general population, either in paid employment or unemployed, London and Cambridge
E. 'A' level students, Cambridge
F. People in the general population, either in paid employment or unemployed, Cambridge
G. Police officers, Maidstone
H. People with learning disabilities who were hospital in-patients, London (piloting)
I. People attending designated day-services for people with learning disabilities, London
J. People in the general population in paid employment, London
K. People attending designated day-services for people with learning disabilities, London
L. People in the general population who were unemployed, London and Newcastle
M. People in the general population who were unemployed, London and Newcastle

Form 3053

METROPOLITAN POLICE

NOTICE TO DETAINED PERSONS

This side is to be read to the detained person by the Custody Officer before giving the Notice to the detained person.

You have the right to: —

1. Have someone informed of your arrest.

2. Consult a solicitor.

3. Consult a copy of the Codes of Practice.

You may do any of these things now, but if you do not, you may still do so later.

An explanation of these and other rights is set out overleaf.

NOTICE TO DETAINED PERSONS

If you are asked questions about a suspected offence you do not have to say anything unless you wish to do so, but what you say may be given in evidence

1. The right to have someone informed of your detention.

   You may on request have one person known to you, or who is likely to take an interest in your welfare, informed at public expense as soon as practicable of your whereabouts. If the person you nominate cannot be contacted you may choose up to two alternatives. If they too cannot be contacted the Custody Officer has discretion to allow further attempts until the information has been conveyed.

2. The right to legal advice.

   You may at any time consult and communicate privately, either in person, in writing or on the telephone, with a solicitor.

   Under certain circumstances both of the above rights may be suspended for a limited period in accordance with the Codes of Practice.

3. A copy of the Codes of Practice.

   A copy of the Codes of Practice governing police procedures will be made available to you on request.

   You do not have to exercise any of the above three rights immediately.

4. A copy of the Custody Record.

   A record of your detention will be kept by the Custody Officer. When you leave police detention or are taken before a Court, you or your legal representative shall be supplied on request with a copy of the Custody Record as soon as practicable. This entitlement lasts for 12 months after your release from police detention.

APPENDIX 3B: REVISED *NOTICE TO DETAINED PERSONS* – 1ST APRIL 1991 TO 31ST MARCH 1995

Form 3053

METROPOLITAN POLICE

Notice to Detained Person

The section in capital letters is to be read to the detained person by the Custody Officer before giving the notice to the detained person.

If you are asked questions about a suspected offence, you do not have to say anything unless you wish to do so, but what you say may be given in evidence.

YOU HAVE THE RIGHT TO:

1. SPEAK TO AN INDEPENDENT SOLICITOR FREE OF CHARGE
2. HAVE SOMEONE TOLD THAT YOU HAVE BEEN ARRESTED
3. CONSULT THE CODES OF PRACTICE COVERING POLICE POWERS AND PROCEDURES.

YOU MAY DO ANY OF THESE THINGS NOW, BUT IF YOU DO NOT, YOU MAY STILL DO SO ANY TIME WHILST DETAINED AT THE POLICE STATION.

More information is given below.

Free Legal Advice.

You can speak to a solicitor at the police station at any time, day or night. It will cost you nothing.

Access to legal advice can only be delayed in certain exceptional circumstances (see Annex B of Code of Practice C).

If you do not know a solicitor, or you cannot contact your own solicitor, ask for the duty solicitor. He or she is nothing to do with the police. Or you can ask to see a list of local solicitors.

You can talk to the solicitor in private on the telephone, and the solicitor may come to see you at the police station.

If the police want to question you, you can ask for the solicitor to be there.

If there is a delay, ask the police to contact the solicitor again. Normally, the police must not question you until you have spoken to the solicitor. However, there are certain circumstances in which the police may question you without a solicitor being present (see paragraph 6.6 of Code of Practice C).

If you want to see a solicitor, tell the Custody Officer at once. You can ask for legal advice at any time during your detention. Even if you tell the police you do not want a solicitor at first, you can change your mind at any time.

THE LAW SOCIETY

The right to have someone informed of your detention.

You may on request have one person known to you, or who is likely to take an interest in your welfare, informed at public expense as soon as practicable of your whereabouts. If the person you name cannot be contacted you may choose up to two alternatives. If they too cannot be contacted the Custody Officer has discretion to allow further attempts until the information has been conveyed. This right can only be delayed in exceptional circumstances (see Annex B of Code of Practice C).

The right to consult the Codes of Practice.

The Codes of Practice will be made available to you on request. These Codes govern police procedures. The right to consult the Codes of Practice does not entitle you to delay unreasonably any necessary investigative and administrative action, neither does it allow procedures under the Road Traffic Act 1988 requiring the provision of breath, blood or urine specimens to be delayed.

The right to a copy of the Custody Record.

A record of your detention will be kept by the Custody Officer. When you leave police detention or are taken before a Court, you or your legal representative or the appropriate adult shall be supplied on request with a copy of the Custody Record as soon as practicable. This entitlement lasts for 12 months after your release from police detention.

APPENDIX 3C: EXPERIMENTAL *NOTICE TO DETAINED PERSONS*

(i) Information for the Custody Officer to read out to detained persons (*the oral information*);
(ii) Information card outlining the main points of the verbal information (*the information card*);
(iii) Further information leaflet, for detained persons' reference (*the further information leaflet).*

(i) THE ORAL INFORMATION

INFORMATION FOR PEOPLE WHO HAVE BEEN ARRESTED BY THE POLICE

For the Custody Officer to read out:

You do not have to say anything to the police if you do not want to. If you do talk to the police, or answer their questions, they can use what you have said to help them find out if you or anyone else has done a crime. What you say may also be used in Court.

- Do you want a solicitor to help you while you are at the police station? A solicitor has nothing to do with the police. You do not have to pay money to talk to a solicitor. The police will help you find a solicitor if you do not know one.

- Do you want your family or someone who cares about you to know that you are at the police station? You do not need any money to pay for the police telling someone where you are.

- Do you want to look at the Codes of Practice? The Codes of Practice is a book. It tells you what the police are and are not allowed to do while you are at the police station.

If you do not want a solicitor right now, or you do not want someone told that you are at the police station right now, or you do not want to look at the Codes of Practice right now, you can change your mind later.

If you do change your mind later, tell the police and they will help you.

There is some special help the police must give to people who have reading problems. And people with learning difficulties (mental handicap). And people who have been to a special school. Do you need this special help?

The police must also give special help to people who have recently been in a psychiatric hospital or who have a mental illness. Do you need this special help?

I am now going to give you a card which tells you the main things I have said (Information for People Who Have Been Arrested By The Police).

There is some more information in the leaflet (Further Information for People Who Have Been Arrested By The Police) on the desk.

(ii) THE INFORMATION CARD

INFORMATION FOR PEOPLE WHO HAVE BEEN ARRESTED BY THE POLICE

(front)

Remember:

1. Ask the police if you want a solicitor to help you while you are at the police station. It will not cost you anything.
2. Ask the police if you want your family or someone else who cares about you to know that you are at a police station. It will not cost you anything.
3. Ask the police if you want to look at the Codes of Practice (the book which tells you what the police are and are not allowed to do while you are at the police station).

(back)

(iii) THE FURTHER INFORMATION LEAFLET

FURTHER INFORMATION FOR PEOPLE ARRESTED BY THE POLICE

1. GETTING A SOLICITOR TO HELP YOU:

- You must be allowed to talk to a solicitor at any time, day or night, when you are at a police station. You do not have to pay any money to speak to a solicitor.

- You can talk to a solicitor on the telephone without the police knowing what you are telling him or her. A solicitor may come to see you at the police station.

- Most of the time, the police are not allowed to ask you questions until you have had the chance to talk to a solicitor. You can also ask for a solicitor to be in the room with you when the police ask you questions.

- If you want a solicitor, tell the Custody Officer (the police officer who is in charge of you while you are at the police station). The police will help you get in touch with a solicitor.

- If you do not know a solicitor or you cannot get in touch with your own solicitor, there is a person called the duty solicitor. The police will help you get in touch with him or her. He or she is nothing to do with the police. Or you can ask for a solicitor who lives nearby.

- If a solicitor does not turn up, ask the police to get in touch with him or her again.

However:

The police can ask you to give blood samples, urine samples, and samples of your breath before you have talked to a solicitor. The Road Traffic Act, 1988, is the law which allows the police to ask you for these samples.

There are some very special times when the police can ask you questions before you have talked to a solicitor. Information about these very special times is given in the Codes of Practice. This is the book which tells you what the police are and are not allowed to do while you are at the police station. If you want to look it up, it is in paragraph 6.6 of Code C of the Codes of Practice (page 48).

There are also some very special times when the police will not let you speak to a solicitor straight away. Information about these very special times is given in the Codes of Practice. If you want to look it up, it is in Annex B of Code C of the Codes of Practice (pages 71-73).

continued ...

2. TELLING SOMEONE THAT YOU ARE AT THE POLICE STATION:

- You can ask the police to tell your family or someone else who cares about you that you are at the police station. You do not have to pay money for the police to get in touch with someone. The police will get in touch with someone as soon as they can.

- If the police cannot get in touch with the first person you want to know that you are at the police station they will ask you for the name of someone else. If they cannot get in touch with this second person, they'll ask you for the name of someone else.

- If the police cannot get in touch with any of the first three people you want told that you are at the police station, the Custody Officer (the police officer who is in charge of you while you are at the police station) may ask you for the names of other people. But the Custody Officer does not have to do this.

There are some very special times when the police will not allow you to get in touch with anyone. Information about these very special times is given in the Codes of Practice. If you want to look it up, it is in Annex B of Code C of the Codes of Practice (pages 71-73).

3. LOOKING AT THE CODES OF PRACTICE:

- The Codes of Practice is a book which tells you what the police are and are not allowed to do while you are at the police station.

- If you ask the police, they will let you look at the Codes of Practice.

But you are not allowed to look at the Codes of Practice for such a long time that it holds up the police in finding out if you have done a crime.

4. HAVING THE CUSTODY RECORD:

- Everything that happens to you when at the police station is written down. The paper on which it is written is called the Custody Record.

- When you leave the police station, you can ask for a copy of the Custody Record. If you do not want to ask for it, your solicitor or someone you know well can ask instead. The police have to give you a copy of the Custody Record as soon as they can.

- You are allowed to ask the police for a copy of the Custody Record at any time in the 12 months (that is, the year) after you leave the police station. If you ask more than 12 months (a year) after, the police will not give you a copy of the Custody Record.

APPENDIX 4

MATERIAL RELATING TO THE FILM DEVELOPED IN STUDY 4, AND USED IN STUDY 5 (CH. 4)

APPENDIX 4A: TRANSCRIPT OF FINAL VERSION OF THE FILM.

DI SPEED: This interview is being tape-recorded. I am Detective Inspector Keith Speed and I am attached to Thamestown Police Station. We are in the interview room on the first floor of Thamestown Police Station. I am interviewing. Would you please give me your full name and address?

MARTIN JAMES: Martin James, 18, Quincy Road, Thamestown.

DI: Can I tell you, Martin that you are entitled to speak to a solicitor at any time day or night and that this legal advice is free? Do you wish to speak to a solicitor?

M: No.

PAUSE ONE

DI: You are happy for this interview to continue without a solicitor?

M: Yes.

DI: There is no other person present. The date is Sunday, 20th June, 1993, and the time by my watch is 10.24 am. At the conclusion of this interview, I will give you a notice explaining what will happen to the tapes. Does that make sense, Martin?

M: Yeah.

DI: Now, when you were arrested, you were cautioned, and I propose to caution you again. And that caution reads 'you do not have to say anything unless you wish to do so but what you say may be given in evidence'.

PAUSE TWO

DI: Do you understand?

M: Yeah.

DI: Tell me in your own words what that caution means.

M: It means that I don't have to tell you something if I don't want to.

DI: Very good. I am afraid, Martin, that I don't know a great deal about you. Would you mind telling me something about yourself, your lifestyle?

M: I live at home with my brother, no parents… that's about it.

DI: How about work, have you done any work?

M: Bit of painting and decorating… other than that, no.

DI: Tell me what you do with your day then?

M: Go down the Job Centre, have a look what's going, go home and watch TV, go down the pub, watch TV with my mates… that's it.

DI: What about yesterday, Saturday?

M: Yesterday, got up about eleven in the morning, stayed indoors, watched the sport on TV. Then I got a video out in the afternoon and watched that. My brother… went down the pub.

DI: You went down the pub with your brother?

M: No, he went down with his mates, and I stayed at home and watched the video.

DI: And you stayed in all evening?

M: Yeah.
DI: Are you sure about that?
M: Yeah.
DI: When you were arrested by the police last night, at home, why do you think they picked on you? Do you think we just picked your name out of a hat?
M: …
DI: Shall I tell you why we arrested you?
M: …Yeah.
DI: Shortly before 8 o'clock last night, a member of the public phoned us up and she lives in the area. And she described someone climbing over the back wall into 36 Beverley Road… She's given us an excellent description, Martin. She's described exactly what you were wearing… She's described your top perfectly…
M: Don't know. It weren't me.

PAUSE THREE

DI: And what's more, Martin, she knows you.
M: …Can I have a fag?
DI: ' Course you can.
M: …I was there last night.
DI: Well I don't think that was ever in dispute, Martin. Tell me what happened.
M: I climbed over the back wall, went up to the back door, broke the glass in the back door and let myself in. But I only went in the kitchen. I looked round the kitchen. I found a tin in one of the cupboards with eight quid in it… then I went.

PAUSE FOUR

DI: Martin… I have been interviewing people for twenty years and I know when they're telling the truth…Now, this may not be easy, but you have told me half of what's happened. You told me you broke in but that's because we've got a witness. Now you want me to believe that all you did was take eight pounds. This may not be easy for you to say because this is a very serious offence… but I can assure you that telling the truth is always the best thing to do. And I've found that when people do tell the truth and they get it off their chest, they feel greatly relieved.
M: … I don't remember everything but I did it.
DI: Can you tell me what you mean 'I did it'?
M: … I killed him. But I didn't mean it, it was an accident.

PAUSE FIVE

DI: Well, obviously I will need to interview you further. But having admitted what you have just done, I strongly suggest you seek the services of a solicitor. And I am quite prepared to stop this interview now so that you can be represented. Would you like me to call a solicitor on your behalf?
M: …Yeah.
DI: How are you feeling?
M: Sick.
DI: I'll stop this interview now… to let you recover and to let you speak to a solicitor. Is there anything you wish to add, anything further, or do you wish to clarify anything, before I stop the tape.?
M: No.

END

IC: The interview you have just seen is entirely fictional. The people you saw in the film are actors playing parts. They are not who they said they were.
M: I am not Martin James.
DI: And I am not Detective Inspector Keith Speed.

END OF VIDEO-TAPED FILM

APPENDIX 4B: FINAL VERSION OF THE INTERVIEW SCHEDULE FOR USE WITH THE FILM

In the file you are about to see a young man called Martin James is being questioned by a policeman, D.I. Keith Speed. D.I. Speed thinks that Martin broke into a house, stole some money, and killed the man who lived there.

In fact, Martin did break into the house and take some money. But he did not kill the man. Martin did not even know that the man had been killed until he was arrested by the police.

At different times on the film, I will stop the tape to ask you some questions. Please answer the questions as well as you can.

Questions:

1. Martin has just said that he does not wish to talk to a solicitor.

    1.1. Should Martin have a solicitor even if he did not commit (that means he didn't do) any crime?
    1.2. What could a solicitor do?
    1.3. If Martin had a solicitor with him, would it:
        a. Be free of charge? or
        b. Cost him money?

2. D.I. Speed has just told Martin the caution.

    Please tell me in your own words what the caution means.

3. Even though a woman saw Martin going over the back wall of the house where the man was killed, Martin has told the policeman that he was not at the house:

    3.1. Was Martin actually at the house?
    3.2. Why do you think Martin said that he was not at the house?
    3.3. What do you think will happen to Martin next? Do you think that D.I. Speed will:
        a. Let Martin go home now?
        b. Keep Martin at the police station and go on asking questions until he gets the whole story?
        c. Lock Martin up on his own in a cell at the police station and keep him there until he tells him the whole story?
        d. Do something else? What?
    3.4. Which of these is most likely to happen?
    3.5. *Which of these is least likely to happen?*

4. Martin has now owned up that he was at the man's house.

    4.1. Do you think that D.I. Speed will:
        a. Let Martin go home?
        b. Keep Martin in the room and keep asking him questions?
        c. Send Martin straight to prison?

d. Lock Martin up on his own in a cell at the police station until he tells him the whole story?
e. Do something else, what?

4.2. Which of these is most likely to happen?
4.3. *Which of these is least likely to happen?*
4.4. Do you think Martin should ask for a solicitor now? Why/Why not?
4.5. Martin has owned up that he was at the house. Did he kill the man?

5. Martin has just told D.I. Speed that he killed the man, even though he did not do it.

5.1. What do you think will happen to Martin in the next few minutes?
5.2. Do you think D.I. Speed will:
a. Let Martin go home?
b. Keep Martin in the room and keep asking him questions?
c. Send Martin straight to prison?
d. Lock Martin up on his own in a cell at the police station until he tells him the whole story?
e. Do something else. What?
5.3. Which of these is most likely to happen?
5.4. *Which of these is least likely to happen?*

6. What do you think will happen to Martin in the next few months if he keeps saying that he killed the man?

6.1. Do you think he will:
a. Be able to go straight home and hear no more about it?
b. Go straight to prison without going to Court and be kept there?
c. Be able to go home until he has to go to Court?
d. Have to go to prison until it is time to go to Court?
e. Something else. What?
6.2. Which of these is most likely to happen?
6.3. *Which of these is least likely to happen?*

7. If Martin says in Court that he killed the man, do you think the Court will find him guilty (that means say he did it), even though he didn't do it? Why/Why not?

8. If the Court found that Martin had killed the man, what would happen to him then?

8.1. Would the Court:
a. Send Martin to prison?
b. Make Martin pay a fine?
c. Send Martin to hospital?
d. Let Martin go home?
e. Make Martin do something else? What?
8.2. Which of these is most likely to happen?
8.3. *Which of these is least likely to happen?*

9. Do you think Martin should ask for a solicitor now? Why/Why not?

10. If Martin now talks to a solicitor and tells the police that he has changed his mind and that he did not kill the man, will D.I. Speed believe him? Why/Why not?

APPENDIX 5

SCALE FOR ASSESSING ACQUIESCENCE (WINKLER ET AL., 1982)

Listed below are a number of statements. Read each item and decide whether in your view the statement is **TRUE** or **FALSE**. If the statement is TRUE, then circle TRUE; if it is FALSE, then circle FALSE.

1.	Prescription drugs frequently do more harm than good.	TRUE	FALSE
2.	It is always silly to suffer if a medicine will make you feel better.	TRUE	FALSE
3.	Good health is largely a matter of luck.	TRUE	FALSE
4.	There is little a person can do to prevent illness.	TRUE	FALSE
5.	Taking care of yourself won't affect whether you get sick or not.	TRUE	FALSE
6.	Medical care can't do much for you if you are really sick.	TRUE	FALSE
7.	I would rather my doctor just told me what to do.	TRUE	FALSE
8.	Doctors don't always check everything when examining their patients.	TRUE	FALSE
9.	Even good doctors disagree about how to treat an illness.	TRUE	FALSE
10.	Doctors never expose their patients to unnecessary risks.	TRUE	FALSE
11.	When a treatment involves risks, doctors always discuss risks with patients.	TRUE	FALSE
12.	Doctors don't usually explain your medical problem with you.	TRUE	FALSE
13.	Prescription drugs are almost always helpful.	TRUE	FALSE
14.	A person should take medicine only as a last resort.	TRUE	FALSE
15.	When it comes to health there is no such thing as bad luck.	TRUE	FALSE
16.	Anyone can learn a few basic health rules which will go a long way in preventing illness.	TRUE	FALSE
17.	In the long run, people who take good care of themselves stay healthier and get well more quickly.	TRUE	FALSE
18.	It mainly takes good medical care to get over an illness.	TRUE	FALSE
19.	When there is an important medical decision to make regarding any treatment, I want to be given enough information so that I can help make that decision.	TRUE	FALSE
20.	Doctors are very careful to check everything when examining their patients.	TRUE	FALSE
21.	Good doctors nearly always agree on how to treat a specific illness.	TRUE	FALSE
22.	Sometimes doctors prescribe treatments that involve unnecessary risks.	TRUE	FALSE
23.	Doctors don't always explain to their patients the risks involved in certain treatments.	TRUE	FALSE
24.	Most doctors carefully explain what happens to their patients.	TRUE	FALSE

APPENDIX 6

FORM 57M - 'APPROPRIATE ADULT AND MEDICAL CARE' (METROPOLITAN POLICE SERVICE, INTRODUCED 1998) (CH. 7)

METROPOLITAN POLICE SERVICE — Form 57M

Custody Record — *Continuation Sheet* **Appropriate Adult and Medical Care**

Custody No. ..... | Name .....

The questions in Parts A and B are to be read aloud to the arrested person.

Part A Need for an appropriate adult

(Tick ✓ relevant boxes and complete as applicable)

1. *"There is help that police must give to people with reading problems."*

   "Do you need this help?" YES ☐ NO ☐

2. *"There is special help that police must give to people who have learning difficulties or learning disabilities (mental handicap).*

   *"Do you need this **special help**?"* YES ☐ NO ☐

3. *"The police must give **special help** to people who went to a special school."*

   *"Do you need this **special help**?"* YES ☐ NO ☐

4. *"The police must also give **special help** to people who have a mental health problem or who suffer from mental illness."*

   *"Do you need this **special help**?"* YES ☐ NO ☐

5. *"Do you need help for any other reason?"* YES ☐ NO ☐

   If YES *"For what other reason do you need help?"* .....

   .....

   .....

The term "***special help***" relates to the provision of an **appropriate adult** as defined within PACE Codes of Practice and the custody officer should explain the role of the appropriate adult to the detained person and the appropriate adult (**see below**).

Regardless of the answers to the above, if the custody officer has "any suspicion, or is told in good faith, that a person of any age may be mentally disordered or mentally handicapped, or mentally incapable of understanding the significance of questions put to him or his replies", an appropriate adult must be called. In an interview, the appropriate adult is not expected to act simply as an observer. The purposes of his/her presence are, first, to advise the person being questioned and to observe whether or not the interview is being conducted properly and fairly, and secondly, to facilitate communication with the person being interviewed. Arrested persons who need special help are those who may, without knowing or wishing to do so be particularly prone in certain circumstances to provide information which is unreliable, misleading or self-incriminating.

Part B Need for medical attention

(Tick ✓ relevant boxes and complete as applicable)

1. *"Are you suffering from any medical condition, illness or injury?"* YES ☐ NO ☐ (If NO go to 3)

   If YES, please specify.....

2. *"Are you receiving treatment for this condition, illness or injury?"* YES ☐ NO ☐

   If YES, please specify.....

3. *"Are you taking any medication?"* YES ☐ NO ☐

   If YES, please specify.....

4. *"Have you ever tried to harm yourself?"* YES ☐ NO ☐

   If YES, please specify.....

   .....

Regardless of the answers, if there are any doubts about the arrested person's medical condition, action to secure medical attention should be taken in accordance with Code C section 9 and current MPS policy.

Signed ..... (Custody Officer) Date ..... (Enter year in full) Time ..... (24 Hr.)

M.P. 2170/98

APPENDIX 7

DETAILS OF THE STATISTICAL TESTS USED IN THE THESIS

Throughout the thesis the data were analysed using Howell (1997), Siegel and Castellan (1988) and SPSS for Windows (SPSS-Inc., 1995).

Tests of Difference

The Binomial test for two related samples (McNemar's test)

This test is used when the population consists of two categories (e.g. 'right' or 'wrong') in two related samples. For example, it can be used to determine whether there has been a significant increase in the number of participants who get a question right before and after a certain intervention. The null hypothesis is that, given that a response to a question has changed since the intervention, it is as likely to have become correct as incorrect.

The Z-test (or Binomial test) for two independent samples

This test is used to compare proportions from two independent samples. The null hypothesis is that the proportions are equal.

The t-test, Mann-Whitney U test and Wilcoxon Signed Ranks test

These tests are used to determine whether the scores from two samples come from populations with different values of measures of central tendency. If the data from independent groups of participants do not differ significantly from the Normal Distribution (as determined by the Kolmogorov-Smirnov test), then the *t*-test for independent samples is used to compare the means; Levene's test for equality of variances is applied to determine whether to use the test for samples with equal or unequal variances. If the data from either group cannot be approximated to the Normal Distribution, the Mann-Whitney *U* Test is used; this is a non-parametric test used to determine whether two independent groups have been drawn from populations with the same median. In cases in which the two samples are related (i.e. the data consists of two sets of measurements taken from the same sample), either the *t*-test for related samples is used or, in non-parametric cases, the Wilcoxon Signed Ranks test is used.

Tests of Association

The Chi-Square test

This test is used when the scores from two independent samples fall into one or other of two mutually exclusive classes. It is used to determine whether the frequencies observed in a 2 x 2 contingency table differ significantly than those expected by chance. The null hypothesis is based on the assumption that the two variables in the table are unrelated. The Chi-square test requires that the expected frequencies in each cell are not too small (i.e. no more than 1 of the cells should have an expected frequency of less than 5, and no cell should have an expected frequency of 1). If the frequencies are too small for the Chi-square test to used, then the Fisher Exact test is used; the null hypothesis is based on the assumption that the two sample are unrelated, and the test calculates the probability of getting a result as OR MORE different from chance as that observed.

Pearson's Product-Moment Correlation Coefficient and Spearman's Rank Order Correlation Co-efficient

If the data from two independent variables do not differ significantly from the Normal Distribution (as determined by the Kolmogorov-Smirnov Test), then Pearson's Product-Moment Correlation Coefficient (r) is calculated in order to determine whether the observed correlation differs significantly from 0; otherwise (i.e. if the data from either variable are non-normal), Spearman's Rank Order Correlation Coefficient (ρ) is used. The significance of r, and the difference between two independent rs, can be tested using t-tests (Howell, 1997), whilst the significance of ρ is tested by using critical value tables in Siegel and Castellan (1988).